

WESTERN AUSTRALIA.

WOOD CHIPPING INDUSTRY AGREEMENT.

No. 34 of 1973.

AN ACT to amend the Wood Chipping Industry
Agreement Act, 1969.

[Assented to 9th October, 1973.]

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. (1) This Act may be cited as the *Wood Chipping Industry Agreement Act Amendment Act, 1973.* Short title and citation.

(2) In this Act the Wood Chipping Industry Agreement Act, 1969, is referred to as the principal Act.

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(3) The principal Act as amended by this Act may be cited as the Wood Chipping Industry Agreement Act, 1969-1973.

Section 2
amended.

2. Section 2 of the principal Act is amended—

- (a) by adding immediately before the word “Schedule” in line two of the interpretation “the Agreement”, the word “First”;
- (b) by deleting the passage “time.” in line six of the interpretation “the Agreement” and substituting the passage “time;” ; and
- (c) by adding at the end thereof the following interpretation—

“the Variation Agreement” means the Agreement a copy of which is set out in the Second Schedule to this Act. .

Section 3A
added.

3. The principal Act is amended by adding after section 3 a section as follows—

Ratification
of Variation
Agreement.

3A. The Variation Agreement is ratified. .

Schedule
amended.

4. The heading to the Schedule to the principal Act is deleted and the following headings substituted—

THE SCHEDULES.

FIRST SCHEDULE. .

Second
Schedule

5. The principal Act is amended by adding at the end thereof the following schedule—

SECOND SCHEDULE

AN AGREEMENT made the 12th day of July 1973 BETWEEN THE HONOURABLE ALEXANDER DONALD TAYLOR, B.A. M.L.A. ACTING PREMIER of the State of Western Australia acting for and on behalf of the said State and its instrumentalities (hereinafter referred to as "the State") of the first part W.A. CHIP & PULP CO. PTY. LTD. a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 255 Adelaide Terrace, Perth, in the said State (hereinafter called "the Company" which term shall include its successors and permitted assigns and appointees) of the second part and BUNNING TIMBER HOLDINGS LTD. a company incorporated as aforesaid and having its registered office at 255 Adelaide Terrace, Perth, aforesaid (hereinafter called "the Guarantor") of the third part.

WHEREAS:

- (a) The State the Company and the Guarantor are parties to the agreement between them defined in section 2 of the Wood Chipping Industry Agreement Act, 1969 (which agreement in the form printed in that Act is hereinafter referred to as "the principal Agreement").
- (b) The parties desire to vary the provisions of the principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. Words and phrases to which meanings are given under Clause 1 of the principal Agreement (other than the words and phrases to which meanings are given in this Agreement) shall have the same respective meanings in this Agreement as are given to them in Clause 1 of the principal Agreement.

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

(2) If the said Bill is not passed this Agreement will then cease and determine and neither of the parties will have any claim against the other of them with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

(3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

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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 30th day of September, 1973.

4. The principal Agreement is hereby varied as follows—

(1) Clause 1 is amended by deleting the definition of “year 1”;

(2) Clause 4 is amended as to subparagraph (ii) of paragraph (b) of subclause (1) by substituting for the word “subsection” in line eight the word “subclause”;

(3) Clause 5 is amended as to paragraph (b) of subclause (2) by substituting for the passage “two hundred dollars (\$200.00)” the passage “five hundred dollars (\$500.00)”;

(4) Clause 6 is amended—

(a) by substituting for paragraphs (a) and (b) of subclause (1) the following paragraphs—

Design of
Berth.

(a) as soon as practicable after the execution of this Agreement at the request of the Company proceed with the design and specifications of the berth which design and specifications shall be mutually agreed by the State and the Company and the parties shall use their best endeavours to complete such design and specifications before the 1st day of November, 1973;

(b) subject to the performance by the Company of its obligations under paragraph (a) of this subclause and under subclause (2) of this Clause—

Construc-
tion of
Berth.

(i) as soon as possible after the completion of the design and specifications construct or cause to be constructed the berth AND complete such construction not later than twenty-one (21) months after the completion of such design and specifications;

(ii) dredge the berth to a depth of forty (40) feet below Bunbury Port Datum, the access channel to a bottom width of four hundred (400) feet and to a depth of thirty-six (36) feet below Bunbury Port Datum, the turning basin to a bottom width of sixteen hundred (1600) feet and a depth of thirty-six (36) feet below Bunbury Port Datum AND use its best endeavours to complete such dredging not later than twenty-one (21) months after the commencement of such work;

Dredging.

(iii) in the event of the Company desiring to use vessels requiring an access channel and turning basin with a greater depth of water than thirty-six (36) feet below Bunbury Port Datum and/or a greater bottom width of channel than four hundred (400) feet, pay to the State such sum as is equitable having regard to the proposed use of such additional facilities by all persons including the Company and the contributions to the cost of such facilities made or to be made by other existing and proposed users of the port of Bunbury; ;

Additional Dredging.

(b) by deleting paragraphs (a) and (b) of subclause (2);

(c) by substituting for the paragraph designations "(c)" "(d)" and "(e)" in subclause (2) the paragraph designations "(a)" "(b)" and "(c)" respectively;

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(d) by substituting for the paragraph designations “(f)” in subclause (2) the paragraph designation “(d)” and by substituting for the passage “therefor.” in the last line of that paragraph the passage “therefor;”;
and

(e) by adding to subclause (2) a new paragraph (e) as follows—

Use of local
professional
services
labour and
materials.

(e) as far as it is reasonable and economically practicable—

(i) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;

(ii) use labour available within the said State;

(iii) when calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given reasonable opportunity to tender or quote;
and

(iv) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.;

(5) Clause 8 is amended by deleting the passage “(inclusive of the Company’s contribution of two million nine hundred thousand dollars (\$2,900,000) to the cost of reclamation and dredging as provided for in subclause (2) of Clause 6 hereof)”;

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(6) Clause 9 is amended—

- (a) by substituting for the passage “fifteen (15)” in line four of subclause (1) the passage “forty (40)”;
- (b) by substituting for the figures “1975” in line three of subclause (2) the figures “1976”;
- (c) by substituting for the passage “thirty (30)” in line seven of subclause (2) the passage “forty (40)”;
- (d) by substituting for the passage “date hereof.” in the last line of subclause (2) the passage “1st day of May 1973).”;

(7) Clause 10 is amended by adding after the word “dues” in line seven the passage “and any other charge or due (including tonnage rates)”;

(8) Clause 13 is amended—

- (a) by substituting for the passage “of commencement of year 1” in line three of subclause (2) the words “on which wood chips are first railed”;
- (b) by substituting for subclause (6) the following subclause—
 - (6) notwithstanding the provisions of subclause (5) of this Clause, install equipment of sufficient capacity to ensure that the train turnround times at the chipping mill site and at the stockpile area are acceptable to the Railways Commission; ;
- (c) by substituting for subclause (7) the following subclause—
 - (7) ensure that all wagons are correctly loaded at the chipping mill site and completely emptied at the stockpile area ; and
- (d) by substituting for subclause (8) the following subclause—
 - (8) provide sufficient wagons (subject to the provisions of Clause 17(2) hereof) including spares and replacements in accordance with designs and specifications approved by the said Railways Commission

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to carry all its requirements hereunder. At the expiration or determination of this Agreement such wagons shall become the absolute property of the State which shall not be obliged to pay any compensation to the Company in respect of the acquisition of the said wagons; ;

- (9) Clause 14 is deleted and the following clause substituted—

Minimum
Tonnage.

14. The Company shall, during the continuance of this Agreement, unless the Railways Commission otherwise determines, consign by rail all its requirements of wood chips (being not less than 500,000 tons in any year) from the chipping mill site to the stockpile area.

If a pulp mill is established as provided in Clause 19 hereof the question of minimum tonnage of wood chips and freight rates for the carriage thereof by rail will be renegotiated by the State and the Company. ;

- (10) Clause 15 is amended—

- (a) by substituting for subclauses (1) (2) and (3) the following subclauses respectively—

Railway
Freight
Rates.

- (1) The Company shall throughout the continuance of this Agreement pay to the State on all wood chips transported by rail from the chipping mill site to the stockpile area freight at the following rates:—

Over 500,000 tons and up to
750,000 tons per year—\$2.25
per ton on the total ton-
nage transported.

Over 750,000 tons per year—
\$2.20 per ton on the total
tonnage transported.

- (2) The rates for freight referred to in subclause (1) of this Clause are based on costs prevailing at the 1st day of January 1973 and shall be adjusted on the 1st days of January and July of each year with the new

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rates becoming effective on and from those dates in accordance with the following formula:—

$$F1 = F + \left[.0F \left\{ .80 \left\{ \frac{HR1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR1 - SR}{SR} \right\} \right\} \right]$$

WHERE:

- (i) F1 = New freight rate.
- (ii) F = The existing freight rate.
- (iii) HR = The average hourly rate payable as at the 1st day of January 1973.
- (iv) HR1 = The average hourly rate payable as at the date of adjustment.
- (v) D = The wholesale price (duty free) of distillate in Perth as at 1st day of January 1973.
- (vi) D1 = The wholesale price (duty free) of distillate in Perth as at the date of adjustment.
- (vii) SR = Price of heavy steel rails per ton c.i.f. Port of Fremantle as ascertained from price schedule covering despatches from the Broken Hill Proprietary Company Limited and Australian Iron & Steel Proprietary Limited as at 1st day of January 1973.
- (viii) SR1 = The price of heavy steel rails per ton c.i.f. Port of Fremantle ascertained as aforementioned as at the date of adjustment.

The rates applicable at the 1st day of January 1973 are:—

	Per Hour
1st class driver	\$2.4900
1st class guard	\$2.1975
Trackman	\$1.7075
	\$6.3950
Average hourly rate	\$2.1317
Price of distillate per gallon—21.4 cents	
Price of heavy steel rails per ton c.i.f Port of Fremantle—	\$120.00

This formula shall be subject to review by the Railways Commission after consultation with the Company on the 1st day of January 1978 and thereafter at five-yearly intervals.

(3) All commodities other than wood chips carried for the Company by the Railways Commission shall, unless otherwise determined by the Railways Commission, be charged at gazetted rates.; and

(b) by deleting the words "between noon on Saturday and midnight" in line two of paragraph (a) of subclause (6);

(11) Clause 17 is amended—

(a) by substituting for the words "all locomotives and rolling stock" in lines three and four of subclause (1) the words "all wagons"; and

(b) by substituting for subclauses (2) and (3) the following subclauses—

(2) When in the opinion of the Railways Commission any wagon is no longer capable of being satisfactorily serviced or maintained the Company shall subject to the provisions of subclause (3) of this Clause upon the written request of the said Commission and at the cost of the Company (except where such replacement is made necessary solely by the negligence of the Railways Commission) replace such wagon with one approved by the said Commission.

(3) If any request under subclause (2) of this Clause is made within the period of the initial Forest Produce (Chipwood) License referred to in paragraph (a) of subclause (1) of Clause 4 hereof and the Company considers such request is unreasonable the Company may elect by notice in writing to the Railways Commission within one (1) month of receipt of the request refer to

arbitration as hereinafter provided any dispute or difference as to the reasonableness of the said Commission's request. If the Company fails or omits to elect as aforesaid it shall pay the full replacement cost as provided by subclause (2) of this Clause.;

(12) by adding after Clause 17 a new Clause 17A as follows—

17A. (1) The Company may construct and use private roads within the production area but— Private
Roads.

(a) the plans and specifications for any such road shall be approved in advance by the State and shall where required by the State be subject to conditions including *inter alia* provision for adequate grade separation or such other reasonable protection as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be at all intersections with public roads and railways;

(b) the Company shall—

(i) minimise the extent of forest clearing required for such road alignments and give to the Conservator of Forests six (6) months prior notice of its intention to build any such road;

(ii) at its own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Company's operations and its invitees and licensees) are excluded from use of any such roads; and

(iii) provide fences and stock barriers wherever necessary.

(2) The Company shall in respect of every road constructed pursuant to subclause (1) of this Clause that is open to or used by the public for passage with vehicles comply with the provisions of the Road Maintenance (Contribution) Act, 1965.

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Public
Roads.

(3) Subject to any restriction that the State may reasonably impose by way of limitation of speeds or loads or the use of railway crossings the Company may use any public roads that may from time to time exist in the area of its operations under this Agreement for the purpose of transporting goods and materials in connection with those operations, but where the Company's operations require the use of a public road that is inadequate for the purpose, or results in excessive damage or deterioration of any public road (other than fair wear and tear) the Company shall pay to the State or local authority concerned (except where and to the extent that the Commissioner of Main Roads or local authority agrees to bear the whole or part of the cost involved) the total cost of any upgrading required or of making good the damage or deterioration.

(4) Where the operations of the Company bring about an increase in the conflict of trains and road vehicles at level crossings to such an extent that an improvement in the level of protection requiring the provision of either flashing lights, boom gates or grade separation is considered by the Minister to be warranted following an investigation, the Company shall pay to the State (except where and to the extent that the Minister agrees to bear the whole or part of the cost involved) the total cost of providing the increased level of protection.;

(13) Clause 18 is amended as to subclause (5)—

- (a) by substituting for the passage "three (3)" in line three the passage "six (6)"; and
- (b) by substituting for the passage "an abnormally large supply of water" in lines fourteen and fifteen the passage "a substantial amount of water necessitating additions to the existing water supply scheme at Manjimup";

(14) Clause 19 is amended—

- (a) by substituting for paragraph (b) of subclause (5) the following subclause—
 - (b) water supply and effluent disposal schemes adequate for the requirements of the processing plant (including the employment and

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retention by the Company of expert consultant engineers who shall be required to collaborate closely with the State to design and develop such schemes) and for the protection of the environment; and; and

- (b) by deleting the word "locomotives" and the words "brakevans and bogies" in the first line of paragraph (b) of subclause (16);
- (15) Clause 24 is amended by substituting for the figures "1975" in line three of subclause (a) the figures "1979";
- (16) Clause 25 is amended by deleting the word "locomotives" and the words "brake-vans and bogies" in lines ten and eleven of paragraph (c);
- (17) Clause 27 is deleted and the following clause substituted—

27. (1) The parties may from time to time by Variation.
agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) Where in the opinion of the Minister an agreement made pursuant to subclause (1) of this Clause constitutes a material or substantial alteration of the rights or obligations of either party, the agreement shall contain a declaration to that effect and the Minister shall cause that agreement to be laid upon the Table of each House of Parliament within the twelve (12) sitting days next following its execution.

(3) Either House may, within twelve (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.;

- (18) Clause 28 is amended by adding after the word "shall" in line twenty the words "promptly give notice to the other party of the event or events and shall";

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- (19) by adding after Clause 30 a new clause 30A as follows—

Environ-
mental
Protection.

30A. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Company hereunder that may be made by the State or any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act for the time being in force.;

- (20) Clause 37 is amended by substituting for the passage “date and also the due payment by the Company of the first instalment of one million dollars (\$1,000,000) under subparagraph (i) of paragraph (a) of subclause (2) of Clause 6 hereof.” in lines eight nine ten and eleven the passage “date.”;

- (21) The Schedule to the principal Agreement is amended—

(a) by substituting for the heading “WOOD CHIPS AGREEMENT ACT 1969” the heading “WOOD CHIPPING INDUSTRY AGREEMENT ACT 1969”;

(b) by substituting for the passage “49 Charles Street,” in line five the passage “255 Adelaide Terrace.”;

(c) by substituting for the passage “49-61 Charles Street,” in line ten the passage “255 Adelaide Terrace.”;

(d) by substituting for the passage “five hundred thousand (500,000)” in line twenty-three the passage “six hundred and seventy thousand (670,000)”;

(e) by substituting for the passage “one dollar and seventy-seven cents (\$1.77)” in lines two and three of condition 3 the passage “two dollars and forty-eight cents (\$2.48)”;

(f) by substituting for the passage “one dollar and fifty cents (\$1.50)” in line twelve of condition 3 the passage “two dollars and ten cents (\$2.10)”;

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- (g) by adding after the word "routes" in line six of condition 8 the words "so submitted shall be in accordance with a previously agreed five year cutting plan and";
- (h) by substituting for the last paragraph of condition 9 the following —

The right is reserved to the Conservator to excise from the license area at any time without compensation to the Company—

- (a) any area which the State may require for roads, railways, stream protection, wildlife maintenance, protection of scenic attraction, or any other works of public utility amenity or convenience;
 - (b) any area that has been cut over by the Company for chipwood timber.;
- (i) by substituting for the words "for cutting" in line two of condition 13 the words "from cutting or which fall in watercourses and protected road and stream verges";
 - (j) by substituting for condition 21 the following condition—

21. The Company when working on any catchment area shall take all action required by the Minister to avoid the pollution (including significant salinity changes) of any such catchment area.; and

- (k) by adding after condition 24 a new condition 24A as follows—

24A. The Company shall at all times when operating in dieback (*Phytophthora cinnamomi*) affected areas comply with the hygiene requirements of the Forest Officer in Charge.

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 ALEXANDER
DONALD TAYLOR, B.A., M.L.A. in
the presence of —

A. D. TAYLOR.

H. D. EVANS,
Minister for Forests.

The Common Seal of W.A. CHIP &
PULP CO. PTY. LTD. was hereunto
affixed by the Authority of the
Directors in the presence of—

(C.S.)

C. R. BUNNING,
Director.

I. C. KUBA,
Secretary.

The Common Seal of BUNNING
TIMBER HOLDINGS LTD, was
hereunto affixed by the Authority
of the Directors in the presence
of—

(C.S.)

C. R. BUNNING,
Director.

I. C. KUBA,
Director.
