

**TASMANIAN
REGIONAL FOREST AGREEMENT**

between

THE COMMONWEALTH OF AUSTRALIA

&

THE STATE OF TASMANIA

NOVEMBER 1997

TASMANIAN REGIONAL FOREST AGREEMENT

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TASMANIAN REGIONAL FOREST AGREEMENT

THIS AGREEMENT is made on the 8th day of November 1997

BETWEEN

THE STATE OF TASMANIA, ("the State"); and

THE COMMONWEALTH OF AUSTRALIA ("the Commonwealth").

Recitals

WHEREAS:

A. The State and the Commonwealth have agreed to establish a framework for the management and use of Tasmanian forests which seeks to implement effective conservation, forest management, forest industry practices and in particular:

- provide certainty for conservation of environment and heritage values through the establishment of a CAR Reserve System; and
- provide for the ecologically sustainable management and use of forests in Tasmania; and
- provide for future growth and development of Tasmanian Industries associated with forests and timber products; and
- assist with the development of forest-based tourism and recreational opportunities based on Tasmania's environmental advantages; and
- provide for certainty of resource access to the forest industry; and
- provide for certainty of resource access to the mining industry; and
- remove relevant controls in relation to application of the *Export Control Act 1982* (Cwth); and
- introduce a range of new or enhanced initiatives to assist with forest based development; and

- encourage the development of forest based research; and
- encourage significant employment opportunities and investment throughout Tasmania.

B. To this end, the State and the Commonwealth have entered into this Regional Forest Agreement, as that expression is defined in the Export Control (Hardwood Wood Chips) (1996) Regulations (Cwth), in relation to the Tasmania Region, being the whole of the State of Tasmania.

C. This Agreement has been made having regard to studies and projects carried out in relation to all of the following matters relevant to the Tasmania Region -

- (a) environmental values, including old growth, wilderness, endangered species, national estate values and world heritage values;
- (b) indigenous heritage values;
- (c) economic values of forested areas and forest industries;
- (d) social values (including community needs);
- (e) principles of ecologically sustainable management.

D. This Agreement is divided into Parts. Part 1 applies to the whole Agreement. Part 2 is not intended to create legally binding relations. Part 3 is intended to create legally binding relations. The Attachments are not intended to create legally binding relations except to the extent that this is necessary to give effect to Part 3.

NOW IT IS AGREED as follows:

PART 1

Interpretation

1. This Agreement is to be interpreted, unless the contrary intention appears, with reference to the definitions and general provisions specified in clauses 2 and 3.

Definitions and General Provisions

2. In this Agreement unless the contrary intention appears:

“**Agreement**” means all parts of this Agreement between the Commonwealth and the State and includes the Attachments to this Agreement;

“ANZECC” means the Australian and New Zealand Environment and Conservation Council;

“**Biodiversity**” means biodiversity as defined in the JANIS Report;

“**CAR Reserve System**” means areas under any of the following categories of land tenure - Formal Reserves including Dedicated Reserves, Informal Reserves and other areas on Public Land which have CAR values protected by prescription, and parts of the Private Forest Estate where the CAR values are protected under secure management arrangement by agreement with private landholders. This reserve system is based on the principles of comprehensiveness, adequacy and representativeness, as described in the JANIS Report;

“**CAR Values**” means the conservation values as described by the JANIS Reserve Criteria embodied in the CAR Reserve System;

“**Commission**” means the Australian Heritage Commission established by the *Australian Heritage Commission Act 1975* (Cwth);

“**Commonwealth/Tasmanian Joint Study of National Estate in Tasmania**” means the report published as: Tasmania-Commonwealth Regional Forest Agreement-National Estate report, Background Report Part H, Tasmanian Public Land Use Commission, February 1997;

“**Competition Principles**” means principles as described in the Compendium of National Competition Policy Agreements, January 1997, National Competition Council;

“**Condition and Description Statements**” means statements approved by the Commission regarding the condition and description of a place forming part of the National Estate;

“**CRA**” means the Comprehensive Regional Assessment process carried out by the Commonwealth and the State pursuant to Attachment 1 of the RFA Scoping Agreement;

“**Dedicated Reserve**” means a Formal Reserve equivalent to IUCN Protected Area Management Categories I, II, III, or IV as defined by the IUCN Commission for National Parks and Protected Areas (1994). In Tasmania, Dedicated Reserves comprise the following reserves as described in Attachment 7: national parks, state reserves, game reserves, nature reserves, historic sites and forest reserves not subject to the *Minerals Resources Development Act 1995* (Tas.);

“**Deferred Forest Land**” means land specified in the Register of Deferred Forest Land;

“**DELM**” means the Tasmanian Department of Environment and Land Management;

“**Earth**” means any rock, stone, quartz, clay, sand and gravel and the alluvial or residual of any rock, stone, quartz, clay, sand, soil and gravel;

“Ecologically Sustainable Forest Management” or **“ESFM”** means forest management and use in accordance with the specific objectives and policies for ecologically sustainable development as detailed in the NFPS;

“Endangered Forest Community” means a community listed as endangered in the Tasmania-Commonwealth Regional Forest Agreement Environment & Heritage Report Vol. I, Table 2.8, Background Report Part C, Tasmanian Public Land Use Commission, Nov. 1996, as amended from time to time in accordance with this Agreement;

“Environment and Heritage Values” means values assessed pursuant to Attachment 1 of the RFA Scoping Agreement;

“Forest” or **“forest”** means an area of land carrying a Forest Community, or a plantation of one or more tree species established for timber production;

“Forest Botany Manual” means a manual publishing information and management prescriptions relevant to flora conservation for a nature conservation region in Tasmania, to meet the requirements of the *Forest Practices Code*;

“Forest Community” means any of the 50 forest communities identified in Attachment 6 of this Agreement.

“Forest Estate” means all Forest growing on Public Land or Private Land;

“Forest Management Planning Process” means the statutory process under the *Forestry Act 1920* (Tas.) for the preparation of forest management plans;

“Forest Management Plans” means the forest management plans prepared pursuant to the *Forestry Act 1920* (Tas.);

“Forest Management Systems” means the State’s suite of legislation, policies, codes, plans and management practices as described in the Tasmania-Commonwealth Regional Forest Agreement Background Report Part E: Assessment of Ecologically Sustainable Forest Management Systems and Processes: Independent Expert Advisory Group - Preliminary Report published by the Tasmanian Public Land Use Commission November 1996;

“Forest Practices System” means the system established pursuant to the objective set out in Schedule 7 to the *Forest Practices Act 1985* (Tas.);

“Forest Products” means all live and dead trees, ferns or shrubs or parts thereof;

“Forestry Operations” means -

- (a) the planting of trees; or
- (b) the managing of trees before they are harvested; or

(c) the harvesting of Forest Products

for commercial purposes and includes any related land clearing, land preparation and burning-off, and transport operations;

“Formal Reserve” means a reserve equivalent to IUCN Protected Area Management Categories I, II, III, IV, or VI as defined by the IUCN Commission for National Parks and Protected Areas (1994). The status of Formal Reserves is secure, requiring action by the Tasmanian Parliament for dedication or revocation. Formal Reserves in Tasmania, comprise Dedicated Reserves, and the following reserves as described in Attachment 7: managed natural areas/regional reserves, conservation areas, nature recreation areas and forest reserves subject to the *Mineral Resources Development Act 1995* (Tas.);

“FPB” means the Tasmanian Forest Practices Board;

“High Quality Wilderness” means an area larger than 8000 hectares having National Wilderness Inventory (NWI) ratings 12 or larger, estimated by the methodology used in the NWI (Leslie and Maslen 1995);

“Informal Reserve” means a reserve other than a Forest Reserve as described in Attachment 7 on State Forest comprising an area identified as a Protection Zone under the Management Decision Classification System or other administrative reserve on Public Land which is managed to protect CAR values;

“Integrated Catchment Management” means a coordinated and integrated approach to management planning using catchments as the basic planning area;

“Intensive Forest Management” means the establishment of plantation forest or the thinning of regrowth forest;

“IBRA Region” means one of the eight IBRA regions within Tasmania described in the report titled Interim Biogeographic Regionalisation for Australia (1995);

“IUCN” means the International Union for the Conservation of Nature and Natural Resources;

“ISO 14000 Series” means AS/NZS ISO 14000 series, Environmental Management Systems, Standards Australia, 1996;

“JANIS Report” means the report published by the Joint ANZECC/MCFFA National Forests Policy Statement Implementation Sub-committee in June 1997 titled ‘Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia’;

“JANIS Reserve Criteria” means the criteria as described in the JANIS report which provide guidelines for the reservation of biodiversity, old growth forest and wilderness, taking account of reserve design and management and social and economic considerations;

“Listing Statement” means a listing statement made under s.22 of the *Threatened Species Protection Act 1995* (Tas.);

“Management Decision Classification System” means a map-based zoning system used by Forestry Tasmania for the classification of State Forest and which is described in the Tasmanian-Commonwealth Regional Forest Agreement Background report Part E: Assessment of Ecologically Sustainable Forest Management Systems and Processes: Independent Expert Advisory Group - Preliminary Report published by the Tasmanian Public Land Use Commission, November 1996;

“Management Prescriptions Database” means the database described in the Tasmanian-Commonwealth Regional Forest Agreement Supplement to Environment & Heritage Report Vol VI: Processes and guidelines for determining the conservation requirements for priority flora and fauna species in the Tasmanian comprehensive regional assessment, Tasmanian Public Land Use Commission, April 1997;

“Mineral” means any metallic mineral, non-metallic mineral, industrial mineral, inorganic substance, coal, gas, oil, geothermal substance, atomic substances and matter forming part of the crust of the earth, other than

- (a) the subsoil;
- (b) the layer of soil sustaining vegetation;
- (c) rock, crushed stone, gravel, sand or clay produced on private land for the private use of the owner;
- (d) mineral water

“Mining” means any operation or work carried out to obtain Minerals;

“Mining Operations” means

- (a) any operations or work of a commercial nature carried out on a mining lease with a view to obtaining or treating Minerals; or
- (b) where a valid exploration or retention licence is held, any operations or work in the area covered by that licence for the purpose of exploring for Minerals or evaluating the potential for Mining;

“Mining Product” means any Mineral or Earth obtained by Mining;

“MCFFA” means the Ministerial Council on Forestry, Fisheries and Aquaculture;

“Montreal Process Implementation Group” means the Montreal Process Implementation Group established by the Commonwealth and all State and Territory Governments;

“National Estate” means those places as defined under s.4 of the *Australian Heritage Commission Act 1975* (Cwth);

“National Estate Values” means values attributed by the Australian Heritage Commission to the National Estate;

“NFPS” means the National Forest Policy Statement 1992 endorsed by the Commonwealth and all State and Territory Governments;

“National Greenhouse Response Strategy” means the national strategy endorsed by the Commonwealth and all State and Territory Governments in 1992;

“National Recovery Plan” means a recovery plan made under Part 3 of the *Endangered Species Protection Act 1992* (Cwth);

“National Reserve System” means the reserve system as outlined in the National Strategy for Conservation of Australia’s Biological Diversity;

“Native Forest” or “Native Forest Estate” means an area carrying a Forest Community;

“Old Growth forest” means old growth forest as defined in the JANIS Report;

“Parties” means the State of Tasmania and the Commonwealth of Australia;

“Party” means a Party to this Agreement;

“Priority Species” means those Tasmanian forest associated species listed in the schedule of the *Endangered Species Protection Act 1992* (Cwth) or the *Threatened Species Protection Act 1995* (Tas.) or in Attachment 2 of this Agreement;

“Private Forest Estate” means all Forest growing on Private Land;

“PFT” means Private Forests Tasmania;

“Private Land” means all lands in Tasmania, other than Public Land and land owned or leased by the Commonwealth;

“Public Forest Estate” means all Forest growing on Public Land;

“Public Land” means land as defined in Section 4 of the *Public Land (Administration and Forests) Act 1991* (Tas.) and land owned or leased by the Commonwealth which is identified in Attachment 6 of this Agreement;

“Recovery Plan” means a recovery plan made under section 25 of the *Threatened Species Protection Act 1995* (Tas.) or a recovery plan made under Part 3 of the *Endangered Species Protection Act 1992* (Cwth);

“Regional Forest Agreement” means a Regional Forest Agreement within the meaning of the Export Control (Hardwood Wood Chips) (1996) Regulations (Cwth);

“Register of Deferred Forest Lands” means the register maintained by Forestry Tasmania in accordance with section 17A of the *Forestry Act 1920* (Tas.);

“Register of Multiple Use Forest Land” means the register maintained by Forestry Tasmania in accordance with section 17 of the *Forestry Act 1920* (Tas.);

“Register of the National Estate” means the register of the same name kept pursuant to the *Australian Heritage Commission Act 1975* (Cwth);

“Response to Disturbance Database” means the database maintained by the DELM recording life history and response to disturbance attributes for flora and fauna species;

“RFA Forests - Employment and Industries Development Strategy” means the Strategy of the same name specified in Attachment 12;

“RFA Scoping Agreement” means the Scoping Agreement for a Tasmanian Regional Forest Agreement between the Commonwealth of Australia and the State of Tasmania signed on 16 January 1996;

“State Forest” means land described in Section 4B(1) of the *Forestry Act 1920* (Tas.);

“State Recovery Plan” means a recovery plan made under section 25 of the *Threatened Species Protection Act 1995* (Tas.);

“Statement of Significance” means a statement of significance approved of by the Commission for a place which forms part of the National Estate;

“Sustainability Indicators” means qualitative or quantitative measures, at the regional (sub-national) level developed to assess the criteria for sustainable forest management;

“Tasmania Region” means the whole of the State of Tasmania;

“TFFIC” means the Tasmanian Forests and Forest Industry Council;

“TFFIS” means the Tasmanian Forests and Forest Industry Strategy (Sept. 1990);

“Tasmanian State of the Forest Report” means the report provided to the Tasmanian Minister for Forests as required by Section 59D of the *Forestry Act 1920* (Tas.);

“Threat Abatement Plan” means a threat abatement plan made under Part 3 of the *Endangered Species Protection Act 1992* (Cwth);

“Threatened Fauna Manual” means a manual publishing map based information on known localities and potential habitat which may contain fauna listed under the *Threatened Species Protection Act 1995* (Tas.), produced to meet the requirements of the Forest Practices Code;

“Threatened Species Database” means the database maintained by the DELM recording known locations on all land tenures, conservation status and management prescriptions for species listed under the *Threatened Species Protection Act 1995* (Tas.);

“Warra Case Study” means the case study of the Warra Long Term Ecological Research site established and conducted by Forestry Tasmania;

“Wild Rivers” means a river of natural origin, in which the biological, hydrological and geomorphological processes of river flow, and intimately linked parts of its catchment, have not been significantly altered by modern or colonial society. Wild rivers may include permanent, seasonal or underground water courses. Wild rivers in Tasmania have been agreed as part of the national Wild Rivers project;

“World Heritage Report” means the Tasmania-Commonwealth Regional Forest Agreement Background Report Part I: World Heritage Report: Record of the Tasmanian World Heritage Expert Panel meeting and a Preliminary analysis of the forest and mineral resources in areas identified by the panel (June 1997) and published by the Tasmanian Public Land Use Commission in conjunction with the Commonwealth Forests Taskforce;

“World Heritage Committee” means the UNESCO World Heritage Committee;

“World Heritage Nomination” means the submission by the Commonwealth of a nominated area to the World Heritage Committee for assessment as a World Heritage area.

3. In this Agreement unless the contrary intention appears:
 - (a) a reference to a clause or Attachment is a reference to a clause or Attachment to this Agreement and a reference to this Agreement includes a reference to an Attachment;
 - (b) a reference to this Agreement or another instrument is a reference to this Agreement or that other instrument as amended or varied from time to time;
 - (c) a reference to a statute or ordinance includes any consolidations, amendments, re-enactments or replacements thereof and also includes regulations and other instruments made under them;

- (d) a reference to a code or other instrument includes any consolidations or amendments thereof;
- (e) a word importing the singular includes the plural and vice versa a word importing a gender includes each other gender and a reference to a person includes an individual, firm, body corporate, association (whether incorporated or not), government, governmental or semi-governmental body, local authority or agency;
- (f) a reference to an act, matter or thing includes the whole or any part of that act, matter or thing and a reference to a group of acts, matters, things or persons includes each act, matter, thing or person in that group;
- (g) where any terms and conditions are added to an Attachment of this Agreement it is agreed that those terms and conditions will form part of this Agreement;
- (h) headings are inserted for convenience and do not affect the interpretation of this Agreement.

Regional Forest Agreement

- 4. This is a Regional Forest Agreement which applies to the Tasmania Region.
- 5. The Agreement is for the purpose of providing long-term stability of forests and forest industries.
- 6. The Parties note that export controls on wood sourced from plantations in Tasmania have been removed. The Commonwealth confirms that by the Parties entering this Agreement the export of hardwood woodchips or other unprocessed wood sourced in Tasmania will not be subject to any export controls.

Duration and Extension of Agreement

- 7. This Agreement will commence on the date of its execution, and subject to its terms remain in force for twenty years.
- 8. The process for extending the duration of this Agreement will be agreed by the Parties as part of the third 5 yearly review specified in clause 45.

Cooperation and Response to Requests

- 9. The Parties agree to work cooperatively to address any matters raised in writing by either of them relating to the interpretation or implementation of this Agreement and undertake to respond to any request within 45 days of its receipt.

Dispute Resolution

10. The Parties agree that if a dispute arises between the Parties it must be resolved expeditiously in accordance with the provisions of clauses 11 to 15.
11. When a dispute arises, a Party may serve a notice on the other specifying:
 - (a) the nature and substance of the matter or issue in dispute;
 - (b) that it is a dispute to be resolved in accordance with clauses 11 to 15.
12. Within 7 days of the notice under clause 11 being served the Parties must attempt to settle the dispute and, in default of settlement, appoint a mediator to conduct a mediation concerning the matter or issue in dispute.
13. If the dispute is not settled under clause 12 and the Parties fail to appoint a mediator, either of them may request the President of the Law Council of Australia, or the equivalent officer of such body as in future may have the functions of the Law Council of Australia, to nominate a mediator to conduct the mediation.
14. The costs of a mediator appointed under clauses 12 or 13 are to be shared equally between the Parties.
15. Each of the Parties agrees to use its best endeavours to resolve the dispute through mediation.

Notices

16. Any notice or other communication to be given or made pursuant to this Agreement shall be in writing and addressed as the case may be as follows:

THE STATE

The Secretary
Department of Premier and Cabinet
Level 7
15 Murray Street
HOBART TAS 7000

THE COMMONWEALTH

The Secretary
Department of the Prime Minister and Cabinet
3-5 National Circuit
BARTON ACT 2600

17. Any notice or other communication shall be deemed to have been duly served:

- in the case of hand delivery, when delivered;
- if sent by prepaid post, on the third ordinary business day after the date of posting;
- if sent by facsimile transmission and provided that the sending facsimile machine produces a printout of the time, date and uninterrupted transmission record of the sending of the notice, upon completion of the transmission, if such completion is within ordinary business hours in the place where the recipient's facsimile machine is located, but, if not, then at 9:00 am on the next ordinary business day in such place
- if any other mode of service is agreed in writing between the Parties, when that agreement specifies.

PART 2

18. This Part is not intended to create legally binding relations and provisions in Part 1 in so far as they relate to Part 2 are also not binding.

Basis of Agreement - National Forest Policy Statement (NFPS)

19. The Parties confirm their commitment to fulfilling the goals, objectives and implementation of the NFPS by:

- developing and implementing ecologically sustainable forest management and use; and
- establishing a CAR Reserve System; and
- facilitating the development of an internationally competitive wood production and wood products industry; and
- promoting the conservation and management of the Private Forest Estate.

20. The Commonwealth accepts the principles of the TFFIS except to the extent that they are inconsistent with this Agreement or the NFPS.

Relationship to Previous Forest Agreements

21. This Agreement replaces the following intergovernmental forest agreements and understandings:

- the Interim Forest Agreement for Tasmania (1996); and
- the Statement of Intent (1995); and

- the Heads of Agreement (1988); and
- the Memorandum of Understanding (1986).

Introduction of Legislation

22 The Commonwealth undertakes to use its best endeavours to secure the enactment of legislation which includes provisions to the effect that where a Regional Forest Agreement is in force:

- (a) no controls may be imposed under the *Export Control Act 1982* (Cwth), or under any legislation enacted by the Commonwealth Parliament for a similar purpose, upon the export from the region in respect of which the Agreement was made of woodchips or unprocessed wood; and
- (b) the following Commonwealth legislative provisions do not apply to Forestry Operations on land which under the Agreement may be used for such operations
 - (i) the *Australian Heritage Commission Act 1975*, s.30;
 - (ii) the *Environment Protection (Impact of Proposals) Act 1974*, s. 11;
 - (iii) the Administrative Procedures approved under s.6 of the *Environment Protection (Impact of Proposals) Act 1974*;
 - (iv) the *World Heritage Properties Conservation Act 1983*, s. 6;
- (c) the Commonwealth may only terminate that Regional Forest Agreement:
 - (i) by consent; or
 - (ii) on the ground of a fundamental breach by the State of the spirit of the Agreement, by 30 days' notice in writing following the full observance by the Commonwealth of the dispute resolution procedures for which the Agreement provides; or
 - (iii) by 90 days notice in writing on the ground that circumstances have arisen which, under the Agreement, otherwise entitle the Commonwealth to terminate the agreement unless the State has rectified the situation prior to the end of the 90 day period.

23. The Commonwealth undertakes to:

- (a) prepare a policy outline of such legislation, and circulate that outline to all States which have regions covered by the Export Control (Hardwood Wood Chips) (1996) Regulations (Cwth), by 31 December 1997; and

- (b) thereupon consult with the State and such other States in relation to the legislation; and
- (c) introduce such legislation into the Parliament of the Commonwealth by 30 June 1998.

Action to Establish and Manage Reserves

24. The State undertakes to

- (a) manage the areas in the CAR Reserve System identified in Attachment 6, with the exception of Commonwealth owned or leased land, on the basis outlined in that Attachment and in accordance with the relevant objectives set out in Attachment 7; and
- (b) where any new reserves are to be of a category specified in Attachment 7 which category is provided for in existing legislation, proclaim such new reserves by 31 December 1998; and
- (c) by 31 December 1998 introduce legislation into the Tasmanian Parliament to establish those categories of the revised public land classification system specified in Attachment 7 which are not already provided for by existing legislation and use its best endeavours to secure the enactment of the legislation introduced; and,
- (d) within 3 months after the commencement of the legislation referred to in sub-clause (c) above, where any new reserves are to be included in a category specified in Attachment 7 which is not already provided for by existing legislation, proclaim such new reserves.

National Estate

25. The Commonwealth confirms that it has fulfilled its duties in relation to this Agreement under s.30 of the *Australian Heritage Commission Act 1975* (Cwth) in so far as they were to be performed prior to the date of the commencement of this Agreement.

26. The Parties agree to the management of National Estate Values as set out in Attachment 1.

27. The Commonwealth confirms it has on or before the date of this Agreement entered into an agreement with the Australian Heritage Commission in which the Commission has agreed to perform and comply with all the agreements and confirmations which are specified in Attachment 1 as being agreements and confirmations on the part of the Commission.

Environment Impact Assessment

28. The Commonwealth confirms:

- that it has fulfilled its duties in relation to this Agreement for assessment of environmental impacts under the *Environment Protection (Impact of Proposals) Act 1974* (Cwth) in so far as they were to be performed prior to the date of the commencement of this Agreement; and
- that subject to clause 43 activities covered by this Agreement will not require any further assessment or approval under the *Environment Protection (Impact of Proposals) Act 1974* (Cwth).

29. The State confirms that it has fulfilled its duties in relation to this Agreement for assessment of environmental impacts under the *Environmental Management and Pollution Control Act 1994* (Tas.) in so far as they were to be performed prior to the date of the commencement of this Agreement.

Threatened Species and Communities

30. The Commonwealth confirms that it has fulfilled its duties in relation to this Agreement under the *Endangered Species Protection Act 1992* (Cwth) in so far as they were to be performed prior to the date of the commencement of this Agreement.

31. The State confirms that it has fulfilled its duties in relation to this Agreement under the *Threatened Species Protection Act 1995* (Tas.) in so far as they were to be performed prior to the date of the commencement of this Agreement.

32. Where threatened species are listed under the *Threatened Species Protection Act 1995* (Tas.) and the *Endangered Species Protection Act 1992* (Cwth) any new or revised Recovery Plans will be jointly prepared and funded and implemented cooperatively by the Parties to meet the requirements of both Acts.

33. The Parties will seek to improve outcomes of Recovery Plans for species listed under either the *Threatened Species Protection Act 1995* (Tas.) or the *Endangered Species Protection Act 1992* (Cwth) by developing multiple species Recovery Plans where appropriate.

34. Where threatened Forest Communities restricted to Tasmania are listed under the *Endangered Species Protection Act 1992* (Cwth), any new National Recovery Plans will be prepared jointly by the Parties. The Commonwealth will also continue to consult with the State on the preparation of Threat Abatement Plans for relevant key threatening processes.

35. Where a State Recovery Plan for a nationally listed species restricted to Tasmania meets the requirements of the *Endangered Species Protection Act 1992* (Cwth) the Commonwealth intends to adopt the State Recovery Plan under section 46 of that Act.

36. Where threatened species, threatened Forest Communities or threatening processes extend beyond Tasmania, the Parties agree where possible to jointly prepare with other relevant governments:

- National Recovery Plans for species or forest communities; and
- Threat Abatement Plans for threatening processes listed under the *Endangered Species Protection Act 1992* (Cwth).

and where available, the Commonwealth intends to incorporate any relevant State Recovery Plan or threat abatement plan prepared pursuant to the *Threatened Species Protection Act 1995* (Tas.) as the Tasmanian component of the National Recovery Plan.

37. The Parties, recognising that priorities can change in the light of new information, will continue to consult on the priorities for:

- listing threatened species, Forest Communities, and threatening processes; and
- the preparation of all Recovery Plans and Threat Abatement Plans relevant to this Agreement;

38. The Parties agree that Attachment 2 identifies the status of recovery action for threatened species relevant to this Agreement and which are listed under the *Endangered Species Protection Act 1992* (Cwth) or the *Threatened Species Protection Act 1995* (Tas.).

World Heritage

39. The Parties agree to jointly participate in the further World Heritage assessment of the relevant Australia-wide themes, specified in Table 1.7 of the World Heritage Report, commencing by the 30th June 1998.

40. The Commonwealth agrees that it will give full consideration to the potential social and economic consequences of any World Heritage Nomination of places in Tasmania and that any such nomination will only occur after the fullest consultation and with agreement of the State.

41. The Parties agree that any World Heritage Nominations of any part of the Forest Estate will be from areas within the Dedicated Reserve elements of the CAR Reserve System.

42. The Parties agree:

- that before any World Heritage Nomination of any part of the Forest Estate is made all necessary management arrangements, including joint policy coordination arrangements and a statutory management plan under the relevant Tasmanian legislation will be in place; and

- that prior to any World Heritage Nomination all related funding issues will be resolved to the satisfaction of both Parties.

Other legislation

43. The Parties acknowledge that in some limited circumstances not related to the substance of this Agreement, including foreign investment approvals and export controls for non-forest products or infrastructure development, Commonwealth legislative provisions may also apply.

Monitoring this Agreement

44. This Agreement establishes milestones for the completion of agreed undertakings. These milestones are specified in Attachment 3 and the Parties agree to provide each other annually for the first five years and then as they fall due and as part of the 5 yearly reviews described in clause 45 with written reports detailing the achievement of these milestones using an appropriate reporting mechanism.

Five yearly review

45. A review of the performance of this Agreement is to be undertaken during the last year of each five year period to assess the progress of the Agreement against its specified milestones and commitments:

The review is to be conducted:

- (i) by a person or body jointly appointed by the Parties; and
- (ii) in accordance with agreed priorities, procedures and funding arrangements which are to be agreed no later than six months before the end of each five year period of this Agreement.

The review will also:

- (iii) invite and take account of public comments; and
- (iv) use and take account of the Sustainability Indicators including trends; and
- (v) be sufficient to satisfy the requirements for a State of the Forests Report as required by Section 59D of the *Forestry Act* 1920 (Tas.); and
- (vi) be completed within three months of its commencement; and
- (vii) develop a report detailing the review process and its findings.

46. The report prepared for the Review process described above will be published and made publicly available within three months of it having been received by both Parties.

47. The purpose of the review process under this Agreement is not to renegotiate the Agreement.

The Comprehensive, Adequate and Representative (CAR) Reserve System

48. The Parties agree that the CAR Reserve System is to be established for the purpose of ensuring the long-term conservation and protection of the values defined by the JANIS Reserve Criteria and the land required to achieve this specified in Attachments 6 and 8.

49. The Parties agree that the CAR Reserve System established in accordance with this Agreement, will comprise:

On Public Land as described in Attachment 6:

- Dedicated Reserves and other Formal Reserves; and
- Informal Reserves; and
- areas with CAR values protected by prescription; and

On Private Land as described in Attachment 8:

- lands with CAR values protected under secure management arrangement by agreement with private landholders.

50. The Parties agree that the CAR Reserve System as established in accordance with this Agreement:

- meets the JANIS Reserve Criteria as defined in clause 2; and
- sufficiently protects identified CAR values with adequate buffers within the CAR reserve boundaries; and
- provides adequate protection for Wild Rivers and meets all the requirements for the proposed National Reserve System in respect of Forest Communities.

Public Land

51. The Parties agree that they will each take appropriate action:

- to establish the CAR Reserve System on the Public Land described in Attachment 6 and, where appropriate, shown on Map 1; and
- to manage that system to maintain the CAR Values of that land in a regional context consistent with the management objectives for each element of the reserve system as specified in Attachment 7.

52. The State agrees that it will consult with the Commonwealth prior to rejecting any recommendations made by the Tasmanian Public Land Use Commission in regard to the tenure to be applied those areas listed at sections 1.7 and 1.8 of Attachment 6.

53. The Parties intend that all Deferred Forest Lands not included in the formal CAR Reserve System, other than those specified in Attachment 6, will be removed from the Register of Deferred Forest Land and added to the Register of Multiple Use Forest Land.

54. The Commonwealth has requested and the State has agreed to postpone any harvesting in the Savage River Pipeline corridor. Accordingly the Parties agree:

- to postpone any harvesting and associated forest roading in the area as shown on Map 1; and,
- that this area will continue to be included in the calculation of sustainable yield of special species timber; and,
- that uses other than timber production will continue to be managed in accordance with clause 78 of the Agreement.

55. The Parties agree that:

- a) during the first 4 years of this Agreement, the State will review its resource estimates for deep red myrtle available for supply to the furniture and craft industries, in terms of volume, quality and economic accessibility, and will publish a report of the findings; and
- b) the State will arrange for the review described at (a) above to be independently audited by an auditor agreed by the Parties, and for a report by that auditor to be published;
- c) the further management of the Savage River Pipeline corridor will be considered by the State prior to the first five yearly review of this Agreement in the light of the report and audit described at sub-clauses (a) and (b) above; and
- d) if the resource review and audit confirm the availability, outside the Savage River Pipeline corridor, of adequate resource of acceptable quality and economic accessibility, to maintain a supply of at least 4,500 cubic metres per year of deep red myrtle, for the remainder of the term of the Agreement, then harvesting and associated forest roading within the area will be further postponed for that period; and
- e) in the alternative, the area will be further considered by the State to ensure the availability of deep red myrtle for the period.

56. The Commonwealth agrees that the Commonwealth owned or leased land specified in Attachment 6 will form part of the CAR Reserve System as Informal Reserves. The Commonwealth further agrees that those areas of the Buckland Military Training Area leased by the Commonwealth from the State and not required for the CAR Reserve System will remain available to the State for timber production purposes, including plantation development.

57. The Parties agree that any changes to those elements of the CAR Reserve System in Informal Reserves:

- will only occur in accordance with this Agreement; and
- will maintain the level of protection of identified values at the regional scale; and
- that information on all such changes will be publicly available and provided to the person or body conducting the 5 yearly review described in clause 45 for incorporation into the review process.

Private Land

58. The Parties reaffirm their commitments made in the NFPS to the conservation and management of the Private Forest Estate and in particular the State reaffirms its commitments:

- to continue to ensure that owners of Private Forest comply with the Forest Practices Code (Tas.) for timber harvesting and regeneration operations; and
- to continue to develop adequate mechanisms to protect State and regional nature conservation and catchment values on Private Land; and
- to undertake the initiatives specified in Attachments 9, 10 and 11, which are relevant to Private Land.

59. The Parties recognise the importance to the CAR Reserve System of Environment and Heritage Values on Private Land and the State agrees to implement a process which will facilitate the voluntary participation by private landowners to protect those values specified in Attachment 8.

Maintaining a permanent forest estate

60. The State agrees to adopt the broad policy framework specified in Attachment 9 which is designed to maintain an extensive and permanent Native Forest Estate and to maintain the sustainability of the total Forest Estate.

61. The Parties agree that the policy framework referred to in clause 60, together with the CAR Reserve System and other improvements in the Forest Management Systems as part of this Agreement, meet the requirements of the NFPS for the protection of regional conservation values and catchment management objectives.

Ecologically Sustainable Forest Management (ESFM)

62. The Parties agree that ESFM is an objective which requires a long term commitment to continuous improvement and that the key elements for achieving it are:

- the establishment of the CAR Reserve System;
- the development of internationally competitive forest products industries which are economically sustainable and provide for social and economic benefit; and
- the establishment of fully integrated and strategic forest management systems capable of responding to new information.

63. The State confirms its commitment to the ongoing development, implementation and achievement of ESFM on both Public Land and Private Land through the development and implementation of its Forest Management Systems.

64. The State agrees that in providing for ESFM, its Forest Management Systems will be amended to reflect the undertakings of this Agreement and in particular those undertakings specified in Attachment 10.

Accreditation

65. The Commonwealth accredits as providing for ESFM Tasmania's current approach to its Forest Management Systems, as amended by this Agreement, including:

- improvements specified in Attachment 10; and
- the public reporting and consultative mechanisms specified in Attachment 11.

66. The Commonwealth accredits the process described in the "Review of Forestry Tasmania's Sustainable Yield Methodology for its Native Forest Resource" (Turner and Brack, Department of Forestry, Australian National University, April 1996) and being used by Forestry Tasmania for determining high quality eucalypt sawlog and veneer log sustainable yield for Public Land in Tasmania.

67. The State confirms that the sustainable yield for the Public Forest Estate will continue to be based on areas available for timber harvesting outside the CAR Reserve System.

Protection of priority species

68. The State agrees to protect the Priority Species listed in Attachment 2 (Part A) through the CAR Reserve System or by applying relevant management prescriptions.

69. Prior to the first 5 yearly review, the State will, where practical, assess those species in Attachment 2 (Part B) and determine management requirements in accordance with clause 96 below.

70. The Parties agree that management prescriptions or actions identified in jointly prepared and agreed Recovery Plans or Threat Abatement Plans will be implemented as a matter of priority.

71. The Parties recognise that Priority Species may change and that new or altered management prescriptions may be needed during the term of this Agreement to take account of changes in the status of species, additional information and evolving forest management practices. Alterations in prescriptions will be in accordance with processes described in clause 96.

Consultative Mechanisms

72. The Parties recognise that they already have in place a range of processes and instruments which provide for public participation and consultation. The public reporting activities and consultation opportunities provided through these processes are outlined in Attachment 11 and it is agreed that these will continue through the term of this Agreement.

73. The State further agrees that it will also implement the range of reporting and consultative mechanisms specified in Attachment 11.

Employment and Industry Development

74. In recognition of the unique contribution of forest-based industries to the Tasmanian economy, the Parties intend that this Agreement will have the effect of enhancing the future growth and development of Tasmania's industries associated with forests and timber products by the implementation of the RFA Forests - Employment and Industries Development Strategy. The Parties agree to cooperate in implementing the specified actions in that Strategy as described in Attachment 12. In particular, future growth and development will be achieved through:

- certainty of resource access to the forest industry; and
- removal by the Commonwealth of the need for export licences for unprocessed wood and woodchips sourced in Tasmania; and
- active encouragement of the development of downstream processing in Tasmania such that the preferred market for growers is within the State; and,
- a range of new or enhanced initiatives designed to encourage investment, plantation development, downstream processing, value-adding and jobs growth in Tasmania's forests-based industries; and
- the implementation of new intensive forest management initiatives, including eucalypt and blackwood plantations, and Native Forest thinning, to balance changes in Forest inventory resulting from this Agreement and expand that inventory; and

- security of access to the mining industry by providing defined land tenures as outlined in Attachment 6 which allow for exploration and mining together with the protection of Environment and Heritage Values; and
- the provision for the development of tourism and recreation opportunities based on Tasmania's environmental advantages.

75. The Commonwealth recognises that the TFFIS provides a commitment to a sustainable sawlog and veneer industry, and has identified minimum aggregate target supply levels for eucalypt sawlog and veneer log, and special species timbers from Public Lands.

76. The Parties acknowledge that this Agreement supports the commitments of the TFFIS as far as practicable but recognise that revision of target sawlog supply levels from Public Land may need to be considered as part of the five yearly reviews of sustainable yield specified under the TFFIS.

77. The Parties further acknowledge that the new Intensive Forest Management initiatives concluded in this Agreement have been designed to provide for the TFFIS current target from Public Land of a minimum 300,000 cubic metres per year of high quality eucalypt sawlog/veneer log and 10,000 cubic metres per year of blackwood sawlogs.

Other Forest Uses

78. The Parties agree that Forest uses other than timber production will be determined in accordance with Tasmanian legislation with due regard to protection of Environment and Heritage Values.

79. The Parties recognise subject to clauses 80, 81 and 82 that mineral exploration and mining can occur in those specified parts of the CAR Reserve System which are identified in Attachment 6.

80. The State confirms that mineral exploration in areas covered by the CAR Reserve System will be subject to the Tasmanian Mineral Exploration Code of Practice and that all exploration proposals will be referred to the Mineral Exploration Working Group who will investigate the potential impact on CAR values and recommend appropriate conditions to protect those values.

81. The State will ensure that all proposed mining activities in areas covered by the CAR Reserve System will be subject to environmental impact assessment and environmental management conditions as required by the *Environmental Management and Pollution Control Act 1994* (Tas.), the *State Policies and Projects Act 1993* (Tas.), and/or the *Mineral Resources Development Act 1995* (Tas.).

82. The Parties agree that in relation to those parts of the CAR Reserve System with high quality wilderness values, as identified through the CRA, measures will be taken under State processes to minimise the effects of mineral exploration and mining activities on wilderness values. Rehabilitation of any exploration activity impacts and rehabilitation of any mine site will be in accordance with the provisions of the *Mineral Resources Development Act 1995* (Tas.), and the *Environmental Management and Pollution Control Act 1994* (Tas.) in so far as any permit conditions are

relevant, and will aim both to achieve world's best practice and to return the site to its wilderness condition.

Indigenous Issues

83. The State undertakes that it will introduce into the State Parliament legislation to replace the *Aboriginal Relics Act 1975* (Tas.). This will occur following formal consultation with the Tasmanian Aboriginal community to ensure the appropriate management of Aboriginal heritage, including the maintenance of traditional and historic sites, uses and values in Tasmania.

84. This Agreement is not intended to influence either current or future Native Title claims in any way. Where any government action to implement this Agreement could affect Native Title, that action will be taken in accordance with the *Native Title Act 1993*.

Competition Principles

85. The Commonwealth agrees that the day-to-day pricing and allocation arrangements for wood from the Public Forest Estate are matters for the State. The State confirms its commitment to the pricing and allocation principles set out in the NFPS.

86. The Parties recognise that under the Competition Principles Agreement, governments aim to achieve more transparency and greater efficiency in government owned business enterprises.

87. The State confirms its commitments under the Competition Principles Agreement, which provides that legislation relevant to the allocation and pricing of hardwood logs from State forests will be reviewed before the 31st December 1999. Competitive neutrality principles will be taken into account in any changes following the review.

Research

88. The Parties agree that continuing research in a range of areas is vital to ensure that all aspects of forest management remain up to date with the latest information and technological developments and have outlined research priorities in Attachment 13.

89. The Parties agree to make publicly available, wherever practical, research reports relevant to the substance of this Agreement.

Data Use and Access

90. The Parties recognise that the implementation and monitoring of this Agreement depends on appropriate mutual access to and accreditation of relevant information owned and held by each of them and have agreed to provide such access and accreditation for the term of this Agreement in accordance with the practices and procedures specified in Attachment 14.

Sustainability Indicators

91. The Parties agree to develop and establish by the first of December 1999 an appropriate, practical and cost effective set of Sustainability Indicators which:

- have regard to the Montreal Process Criteria (as amended from time to time) the current form of which is specified in Attachment 4 and take account of the processes and regional framework of indicators developed by the Montreal Process Implementation Group; and
- assess the criteria for sustainable forest management for the whole of the Tasmania Region; and
- take account of the results of the Warra Case Study to develop effective regional indicators; and
- include appropriate social and economic indicators; and

in the development of those indicators the Parties agree to:

- determine the frequency of monitoring and reporting; and
- provide for public consultation and to take account of public comments; and
- develop efficient linkages to the ongoing work being carried out on the Commonwealth and Tasmanian State of the Forests and State of the Environment Reports to avoid duplication of effort.

PART 3

Nature of Obligations under this Part

92. It is the intention of the Parties that this Part is to create legally enforceable rights and obligations. It is also their intention that, in the event that any provision of this Part exceeds the power of either Party or is unenforceable for any other reason, that provision is to be read as not intending to create legally enforceable rights and obligations.

Forest Management

93. The State agrees within five years of the date of this Agreement, to further develop its Forest Management Systems and processes through the development and implementation of environmental management systems in accordance with the principles specified in Attachment 5 and acknowledges that its objective for State Forest is system certification comparable with the ISO 14000 series.

94. The State agrees to publish, and make publicly available, its:
- annual compliance audits of the implementation of the *Forest Practices Act 1985* (Tas.), the Forest Practices Code (being the Code issued pursuant to Section 30 of the *Forest Practices Act 1985* (Tas.)) and its code of reserve management specified in Attachment 10; and
 - 5 yearly independent expert reviews of the operation of the above mentioned codes of practice (the code itself, auditing processes and staff competencies) where they are associated with Forest lands.

Compensation

95.1 If to protect the environment and heritage values in native forests and in connection therewith the protection of:

- (a) CAR Values; or
- (b) Old Growth forest; or
- (c) wilderness; or
- (d) any Priority Species; or
- (e) any Endangered Forest Community; or
- (f) National Estate Values; or
- (g) World Heritage Values; or
- (h) Wild Rivers

the Commonwealth takes any Action during the period of this Agreement which is inconsistent with any provision of this Agreement and a foreseeable and probable consequence of which is to prevent or substantially limit:

- (i) the use of land which is not included within the CAR Reserve System for Forestry Operations which, immediately before the announcement of the proposed Commonwealth Action, are being undertaken or were intended to be undertaken at any time or the use of land which is not included within the CAR Reserve System or of land within that system but not within a Dedicated Reserve for Mining Operations pursuant to a statutory lease, statutory licence or other statutory authority permitting those operations which was in force immediately prior to the announcement of the proposed Commonwealth Action; or,
- (j) the sale or commercial use of Forest Products sourced from land which is not included within the CAR Reserve System or the first sale or first commercial use of Mining Products sourced from land which is not included within the CAR Reserve System or land within that system but not within a Dedicated Reserve for a purpose for which, immediately prior to the announcement of the proposed Commonwealth Action, they had been intended to be sold or used commercially at any time; or,

- (k) the construction on land which is not included within the CAR Reserve System of roads being built or intended to be built, immediately before the announcement of the proposed Commonwealth Action, where those roads primary purpose is for the transportation of Forest Products sourced from land which is not included within the CAR Reserve System,

the Commonwealth will pay compensation to the State in accordance with the remaining provisions of clauses 95.2 to 95.20.

95.2 Subject to:

- (a) clauses 95.3, 95.4, 95.5, 95.6, 95.8, 95.9, 95.10, 95.11 and 95.12 the compensation to be paid by the Commonwealth to the State in accordance with clause 95.1 in relation to the prevention by Commonwealth Action of the use of land for Forestry Operations or prevention by Commonwealth Action of the sale or commercial use of Forest Products is the amount of the reasonable loss or damage sustained by reason of that prevention, calculated as at the time at which the prevention referred to in clause 95.1 occurred, by any person in any of the following classes of person
 - (i) the Owner of the land or of the Forest Products on the land;
 - (ii) any person who, prior to the announcement of the proposed Commonwealth Action but not in anticipation of that Action, entered into a contract with the Owner of the land or of the Forest Products on the land or with any person mentioned in sub-paragraph (iii) below for the carrying out of Forestry Operations on the land ; and
 - (iii) any person who, prior to the announcement of the proposed Commonwealth Action but not in anticipation of that Action, entered into a contract with the Owner of the land or of the Forest Products on the land to purchase the Forest Products on the land.
- (b) clauses 95.3, 95.4, 95.5, 95.6, 95.7, 95.8, 95.10, 95.11 and 95.12 the compensation to be paid by the Commonwealth to the State in accordance with clause 95.1 in relation to the prevention by Commonwealth Action of the use of land for Mining Operations or the first sale or first commercial use of Mining Products is the amount of the reasonable loss or damage sustained by reason of that prevention, calculated as at the time at which the prevention referred to in clause 95.1 occurred, by any person carrying on Mining Operations on the land pursuant to a statutory lease, statutory licence or other statutory authority permitting those operations which was in force immediately prior to the announcement of the proposed Commonwealth Action.
- (c) clauses 95.3, 95.6, 95.8, 95.11 and 95.12 the compensation to be paid by the Commonwealth to the State in accordance with clause 95.1 in relation to the prevention by Commonwealth Action of construction of a road is the amount of reasonable loss or damage sustained by reason of that prevention, calculated as at the time at which the

prevention referred to in clause 95.1 occurred, by any person who, immediately before the announcement of the proposed Commonwealth Action, was contracted to construct that road.

95.3. No amount of compensation is payable in the event of any loss or damage being sustained which would have been so sustained regardless of the Commonwealth Action. No compensation is payable hereunder in respect of any additional areas included pursuant to this Agreement in the CAR Reserve System.

95.4 The State warrants that no claim will be made in respect of areas where Forestry Operations or Mining Operations would not have been permitted by this agreement and that any claims will be certified by it as being or not being in respect of such areas and as having been assessed by the State in this regard.

95.5 The State warrants that no claim will be made in respect of Forest Products or Mining Products which would not have been available for sale or commercial use under this Agreement and that any claims will be certified by it as being or not being in respect of such Products and as having been assessed by the State in this regard.

95.6 The State undertakes to supply to the Commonwealth on request information, including as to areas protected by prescription, required by the Commonwealth for the purposes of considering claims under this clause.

95.7 To the extent that clause 95.2 (b) relates to loss or damage in respect of an exploration licence or a retention licence, that clause is to be read as providing for compensation to be payable only:

- (a) in respect of the part of the area to which that licence relates that is affected by the Commonwealth Action; and
- (b) up to the loss in market value of that licence resulting from the prevention of the Mining Operations

95.8 Any claim made by the State hereunder is to be notified in writing within 6 months after the loss or damage is sustained.

95.9 For the purposes of clause 95.1(i), the intention to conduct Forestry Operations is to be established on the basis of contracts, documentation of management history or other records establishing clear intent and in existence immediately prior to the announcement of the proposed Commonwealth Action.

95.10 For the purposes of clause 95.1(j), the purpose for which there was an intention to sell or use commercially is to be established on the basis of contracts, documentation of management

history or other records establishing clear intent and in existence immediately prior to the announcement of the proposed Commonwealth Action.

95.11 No compensation is payable under clause 95.2 in relation to any loss or damage which the person who sustained the loss or damage might have avoided by taking reasonable steps in mitigation including by the making of alternative contractual arrangements which would have avoided or reduced that loss or damage.

95.12 Clause 95.2 does not apply so as to entitle the State to recover compensation more than once in respect of the same loss or damage.

95.13 The initial procedure in relation to a claim for compensation under this clause is as follows:

- (a) The State is to make the claim for compensation by a notice in writing to the Commonwealth which indicates the amount claimed, for whom the claim is made, the area to which it relates and gives detailed particulars of the basis for the claim, and of the manner in which it has been calculated.
- (b) Where there is a dispute concerning a claim for compensation, or on or before the expiry of thirty days after the receipt of a claim, the Commonwealth notifies the State that it does not accept the amount claimed then either Party may serve a notice of dispute under clause 11.
- (c) In the event that the amount of compensation payable in response to a claim has not been agreed in the dispute resolution process for which clauses 11 to 15 provide, or the Commonwealth fails to pay the agreed amount of compensation to the State within 60 days of agreement (for reasons other than lack of the necessary appropriation), the Parties hereby refer the claim to arbitration in accordance with the *Commercial Arbitration Act* 1986 (Tas.).

95.14 The procedure in relation to any arbitration required by reason of the provisions of clause 95.13 is as follows:

- (a) The Parties must meet to appoint an arbitrator within 7 days of an unsuccessful mediation.
- (b) If the Parties are unable to agree on the appointment of an arbitrator, either of them may refer the matter to the President of the Law Council of Australia, or equivalent officer of such body as in future may have the functions of the Law Council of Australia, with a request that that person appoint an arbitrator.
- (c) At an arbitration under this clause:
 - (i) the Parties are entitled to representation by a legal practitioner qualified to practice in any State of Australia;

- (ii) the arbitrator may order the Parties to discover any relevant documents prior to the hearing;
- (iii) the arbitrator may order the Parties to exchange proofs of evidence of witnesses (whether expert or not) prior to the hearing;
- (iv) the arbitrator may take advice from any other person as to the matters in issue, but if so, the arbitrator must provide the Parties with an opportunity to:
 - (1) make submissions on the matter in which the advice is to be taken;
 - (2) make submissions on the identity of the person from whom the advice is to be taken;
 - (3) make submission on the substance of any advice given before making any decision on the issue on which the advice is taken;
- (v) the arbitrator must conduct the arbitration in accordance with procedural fairness;
- (vi) subject to sections 31 and 32 of the *Commercial Arbitration Act* 1986 (Tas.), the arbitrator may award interest on any sum ordered to be paid by one Party to the other.

95.15 Subject to clause 95.18 and any appeal under section 38.4 of the *Commercial Arbitration Act* 1986 (Tas.) the Commonwealth undertakes to pay the State the amount of any award made by an arbitrator under clause 95.14 (including any award of costs, and any interest which the arbitrator may direct to be payable on the award or any award of costs) as a debt due to the State, and to do so within 60 days of the award.

95.16 Except where the State is the person who sustained the relevant loss or damage, any payment of compensation made by the Commonwealth to the State in accordance with this clause will be paid to and received by the State as trustee for the person who sustained the relevant loss or damage.

95.17 Subject to clause 95.18(b), where the State receives monies as a trustee pursuant to clause 95.16, it will pay those monies to the person who sustained the relevant loss or damage within 30 days.

95.18 (a) Where the Commonwealth has agreed to pay compensation to the State under this clause, or an award of compensation has been made under clause 95.14 as a result of arbitration, and the Commonwealth claims that events have since taken place which have the result that the compensation so agreed or awarded no longer reflects the actual loss or damage that has been or will be sustained, the Commonwealth may by notice in writing to the State, decline to pay that compensation.

- (b) If a notice under paragraph (a) is delivered after the State has received the compensation so agreed or awarded, but before the State has paid it to the person who sustained the relevant loss or damage, the State will not pay the compensation to that person.
- (c) If a notice under paragraph (a) is delivered, the Parties will attempt to agree the amount of the compensation which the Commonwealth should pay, and -
 - (i) in default of agreement, will first seek to resolve the dispute by dispute resolution under clauses 11 to 15; and
 - (ii) in the event that the dispute is not so resolved, or the Commonwealth fails to pay the agreed amount of compensation to the State within 60 days of agreement (for reasons other than lack of the necessary appropriation), hereby refer the claim for compensation to arbitration in accordance with the *Commercial Arbitration Act 1986 (Tas.)*
- (d) Subject to paragraph (e) of this clause, where an arbitration takes place in accordance with sub-paragraph (c)(ii), clauses 95.14 and 95.15 of this Agreement apply to that arbitration and to any amount awarded in that arbitration.
- (e) If, following the observance of paragraph (c) of this clause, it is determined by agreement or award that the Commonwealth should pay a reduced amount of compensation to the State, the State will within 30 days of that determination -
 - (i) repay to the Commonwealth the amount by which the compensation paid to it by the Commonwealth is reduced ; and
 - (ii) pay the balance of the compensation to the person who sustained the relevant loss or damage.
- (f) If, following the observance of paragraph (c) of this clause, it is determined by agreement or award that the amount of compensation previously paid to the State is correct the State will within 30 days of that determination pay to the person who sustained the relevant loss or damage the amount of the compensation previously paid to it by the Commonwealth.

95.19 Where the State:

- (a) has received monies as a trustee pursuant to clause 95.16; and
- (b) has made all reasonable endeavours to pay the monies to the person who sustained the relevant loss or damage; and

- (c) but has been unable to do so within six months of receiving payment

the State shall repay to the Commonwealth at the expiry of that period the monies so received.

95.20 In this clause

(a) “Action” means

- (i) the commencement of legislation or subordinate legislation ; and
- (ii) administrative action which is taken pursuant to legislation or subordinate legislation, or otherwise than in accordance with such legislation.

(b) “Owner” means

- (i) in relation to land
 - (1) the owner of any estate or interest in that land, including the Crown in right of the State ; and
 - (2) any statutory corporation which has the power to carry on Forestry Operations or Mining Operations, as the case may be, on the land for profit.
- (ii) in relation to Forest Products or Mining Products, as the case may be, the owner of any interest in those products.

Databases and Confirmation

96. The State agrees that any changes to the Priority Species in Attachment 2 including new or altered management prescriptions developed over the term of the Agreement will:

- (a) be adequate to maintain the species identified;
- (b) have a sound scientific basis;
- (c) be endorsed by the Tasmanian Threatened Species Scientific Advisory Committee where relevant; and
- (d) take note of public comment.

97. A Management Prescriptions Database and a Response to Disturbance Database have been prepared as part of the comprehensive regional assessment for species identified as priority for protection by reservation and/or management prescription. The State agrees to maintain these

databases and to update them as necessary and also confirms that they will be used as a basis for updating relevant State management documents including the Threatened Species Database, Listing Statements, the Management Decision Classification System, the Forest Botany Manuals and the Threatened Fauna Manual. Updated hard copies of the database contents will be made available periodically for public comment.

Review of Sustainable High Quality Sawlog Supply Levels

98. The State agrees to undertake a review of sustainable high quality sawlog supply levels from public land to reflect the changes in the forest inventory and new intensive forest management initiatives concluded in this Agreement. The review will be completed and published during the first year of this Agreement, and thereafter will coincide with the 5 yearly reviews of this Agreement.

Review of Pricing and Allocation Policies for Commercial Government Owned Forestry Operations

99. The State agrees to undertake by 30th April 1998 a review on pricing and allocation policies for commercial government owned forestry operations and agrees to make available to the public a report describing the outcomes of the review and agrees to consider these outcomes in the development of its pricing and allocation policy.

Financial Assistance

100. The Commonwealth will, subject to the provisions of the *Natural Heritage Trust of Australia Act 1997*, and the terms and conditions of the Partnership Agreement entered into by it with Tasmania on 7 October 1997 under section 19 of that Act as to the financial assistance provided to the State thereunder, provide \$20 million for actions to implement the 'Program to protect conservation values on private land in support of the CAR Reserve System' described at Attachment 8 of this Agreement. Such payments are to be made on the basis provided for in that Attachment.

101. The Commonwealth will, subject to the terms and conditions under any Commonwealth Act which appropriates money for use by the State for the purposes of this Agreement, provide that money to the State as follows:

- (i) an amount of \$57 million in equal instalments over three years commencing 1997-98 for the implementation of new intensive forest management initiatives;
- (ii) an amount of \$13 million in equal instalments over three years commencing 1997-98 for the implementation of employment and industry development initiatives specified in Attachment 12;
- (iii) an amount of \$10 million in equal instalments over three years commencing 1997-98 for infrastructure development projects as specified in Attachment 12, being
 - roading to increase productivity (\$6 million),

- tourism infrastructure (\$3 million) and
 - new reserve management (\$1 million); and
- (iv) a further amount of \$10 million in equal instalments over 2 years commencing 1997-98 for actions to implement the 'Program to protect conservation values on private land in support of the CAR Reserve System' described at Attachment 8 of this Agreement.

Termination

102. This Agreement may only be terminated by the Commonwealth;

- a) with the consent of the State; or
- b) where the dispute resolution procedures in clauses 11 to 15 have been observed and the State has been given a 90 day period of notice on:
- (i) a failure by the State to comply with clause 24(b) or 24(d) being a failure to proclaim any of the new reserves; or
 - (ii) a failure by the State to comply with clause 24(a), being a failure to conserve the areas in the CAR Reserve system identified in Attachment 6 (other than Commonwealth owned or leased land), other than a failure of a minor nature which is not one or a part of a series of deliberate or reckless failures of a minor nature; or
 - (iii) a failure by the State to comply with clause 24(c), being a failure to introduce legislation in accordance with that clause or a failure to use its best endeavours to secure the enactment of that legislation; or
 - (iv) a failure by the State to observe the terms and conditions referred to in clause 100 or 101 or a failure to use the money referred to in clause 100 or 101 for the purpose for which it is appropriated; or
 - (v) a failure by the State to comply with clauses 58, 60, 64, 68 or 73 other than a failure of a minor nature which is not one or a part of a series of deliberate or reckless failures of a minor nature
- save that the above provisions do not apply if rectification is possible and has occurred before the end of the 90 day period; or
- c) on a fundamental failure by the State to comply with the spirit of the Agreement after the observance of the dispute resolution procedures in clauses 11 to 15.

103. The Agreement may only be terminated by the State.

- a) with the consent of the Commonwealth; or
- b) where the dispute resolution procedures in clauses 11 to 15 have been observed and the Commonwealth has been given a 90 day period of notice on:
 - i) a breach by the Commonwealth of clauses 100 and 101, being a failure to pay financial assistance in accordance with those clauses, or
 - ii) a breach by the Commonwealth of clause 95, being a failure to pay compensation due under that clause, or
 - iii) a failure by the Commonwealth to comply with clause 22 or 23 being a failure to introduce into the Commonwealth Parliament the legislation referred to in clause 23 in accordance with that clause, or a failure to use its best endeavours to secure the enactment of that legislation;save that the above provisions do not apply if rectification is possible and has occurred before the end of the 90 day period; or
- c) on a fundamental failure by the Commonwealth to comply with the spirit of the Agreement after the observance of the dispute resolution procedures in clauses 11 to 15.

IN WITNESS WHEREOF this Agreement has been signed for and on behalf of the Parties as at the day and year first above written.

SIGNED by

the HONOURABLE JOHN WINSTON HOWARD, Prime Minister)
)
)

for and on behalf of the Commonwealth of Australia

in the presence of:)
)
)

SIGNED by

the HONOURABLE ANTHONY MAXWELL RUNDLE, Premier)
)
)

for and on behalf of the State of Tasmania

in the presence of:)
)
)