

## **APPENDIX 1 CENTRAL HIGHLANDS REGIONAL FOREST AGREEMENT**

The following section contains the Central Highlands RFA which was signed by the Prime Minister and the Premier on 27 March 1998. It has been attached to assist public comment on the development of the North East RFA. The Attachments to the Central Highlands RFA can be obtained from contact details listed in foreword of this report. The North East RFA will be developed following consideration of public comment on this report and negotiations between the Victorian and Commonwealth governments. The North East RFA will follow a similar format to the Central Highlands RFA, although it will contain detailed Attachments specific to the North East, which address the components of the RFA as discussed in Chapters 3 to 5 of this report.

### **THE CENTRAL HIGHLANDS REGIONAL FOREST AGREEMENT**

#### **Recitals**

WHEREAS:

#### **Purpose of Agreement**

A This Regional Forest Agreement (RFA) establishes the framework for the management of the forests of the Central Highlands. Parties are committed to ensuring the Agreement is durable and that the obligations and commitments that it contains are delivered to ensure effective conservation, forest management and forest industry outcomes.

B This Agreement is a Regional Forest Agreement, for the purposes of the *Export Control Act 1982*, *Export Control (Hardwood Wood Chips) (1996) Regulations* and the *Export Control (Regional Forest Agreements) Regulations*. As such, the Agreement:

- identifies a Comprehensive, Adequate and Representative Reserve System and provides for the conservation of those areas;
- provides for the ecologically sustainable management and use of forests in the region;
- is for the purpose of providing long-term stability of forests and forest industries; and
- has regard to studies and projects carried out in relation to all of the following matters relevant to the 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); and
  - (e) principles of ecologically sustainable management.

C 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:

**“Action Statement”** means an Action Statement made under the *Flora and Fauna Guarantee Act 1988* (Vic);

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

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

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

**“CAR Reserve System”** means areas under any of the following categories of land tenure - as described in the JANIS Report - Dedicated Reserves, Informal Reserves and other areas on Public Land protected by prescription, and areas of private land 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;

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

**“Code of Forest Practices for Timber Production”** means the Code of Forest Practices for Timber Production Revision No 2 1996 developed in accordance with the *Conservation, Forest and Lands Act 1987* (Vic);

**“Code of Practice for Fire Management on Public Land”** means the Code of Practice for Fire Management on Public Land developed pursuant to the *Conservation, Forests and Lands Act 1987* (Vic);

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

**“Comprehensive Regional Assessment”** or **“CRA”** means the assessment process carried out pursuant to Attachment 1 of the Scoping Agreement for Victorian Regional Forest Agreements between the Commonwealth of Australia and the State of Victoria;

**“Crown land”** means land which is, or is deemed to be, unalienated land of the Crown and includes--

- (a) land of the Crown reserved permanently or temporarily or set aside by or under an Act; and
- (b) land of the Crown occupied by a person under a lease, licence or other right.

**“Dedicated Reserve”** means a reserve equivalent to International Union for the Conservation of Nature and Natural Resources (IUCN) Protected Area Management Categories I, II, III, or IV as defined by the IUCN Commission for National Parks and Protected Areas (1994). The status of Dedicated Reserves is secure, requiring action by the Victorian Parliament or in accordance with Victorian legislation for reservation or revocation. In Victoria, Dedicated Reserves include, but are not limited to, parks under the *National Parks Act 1975* (Vic) and flora, fauna or nature conservation reserves under the *Crown Land (Reserves) Act 1978* (Vic);

**“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 National Forest Policy Statement;

**“Ecological Vegetation Class”** or **“EVC”** means for the purposes of the Agreement a forest ecosystem as defined in the JANIS Report. EVCs as they exist at the present time are described in the Central Highlands CRA “Biodiversity Report” published by the Commonwealth and Victorian RFA Steering Committee in 1997;

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

**“Environment Conservation Council”** means the Council of the same name established under the *Environment Conservation Council Act 1997* (Vic);

**“Forest Management Area”** or **“FMA”** means a Forest Management Area as defined in the *Forests Act 1958* (Vic);

**“Forest Management Plan”** means a forest management plan as defined in the Code of Practices for Timber Production to address the full range of values and uses in State forest;

**“Forest Management System”** means the State’s suite of legislation, policies, codes, plans and management practices and processes as described in the “*Victorian Statewide Assessment of Ecological Sustainable Forest Management*” published by the Commonwealth and Victorian RFA Steering Committee in 1997 as varied by this Agreement;

**“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 regeneration (including burning), and transport operations;

**“General Management Zone”** means the zone of the same name described in the Forest Management Plan for the Central Highlands;

**“Informal Reserve”** means a reserve that contains and is managed for conservation values which unequivocally contribute to the CAR Reserve System and meets the principles for Informal Reserves as described in the JANIS Report. In Victoria, it includes, but is not limited to, the State forest Special Protection Zone;

**“Integrated Forest Planning System”** means Victoria’s integrated forest planning system for forecasting sustainable yield;

**“Interim Forest Agreement”** means the Interim Agreement between the Commonwealth of Australia and the State of Victoria signed in January 1996;

**“JANIS Report”** means the report by the Joint Australian and New Zealand Environment and Conservation Council (ANZECC) / Ministerial Council on Forestry, Fisheries and Aquaculture (MCFFA) National Forests Policy Statement Implementation Sub-committee, titled ‘Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia’, published by the Commonwealth of Australia in 1997;

**“JANIS Reserve Criteria”** means the criteria as described in the JANIS Report for establishing the CAR Reserve System addressing biodiversity, old growth forest and wilderness, taking account of reserve design and management and social and economic considerations;

**“Land Conservation Council”** means the Council established under the former *Land Conservation Act 1970* (Vic);

**“Licence, Permit or Authority”** in clause 90 means any licence permit or authority pursuant to the *Mineral Resources Development Act 1990* (Vic) and the *Extractive Industries Development Act 1995* (Vic);

**“Mineral”** means mineral as defined in the *Mineral Resources Development Act 1990* (Vic) and stone as defined in the *Extractive Industries Development Act 1995* (Vic), excluding stone on private land for the private use of the owner and mineral or stone obtained for non-commercial purposes;

**“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 licence or extractive industry work authority with a view to obtaining or treating Minerals; or
- (b) where a valid exploration licence or extractive industry search permit is held, any operations or work in the area covered by that licence or search permit for the purpose of exploring for Minerals;

**“Mining Product”** means any Mineral obtained by Mining;

“**Montreal Process Criteria**” means the Montreal Process criteria for the conservation and sustainable management of temperate and boreal forests;

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

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

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

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

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

“**Parties**” means the State of Victoria and the Commonwealth of Australia;

“**Party**” means a Party to this Agreement;

“**Private Land**” means lands other than Public Land and land owned or leased by the Commonwealth;

“**Public Land**” means public land as defined in section 3 of the *Environment Conservation Council Act 1997* (Vic);

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

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

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

“**Special Protection Zone**” or “**SPZ**” means the zone of the same name described in the Forest Management Plan for the Central Highlands;

“**State Forest**” means land described in section 3 of the *Forests Act 1958* (Vic);

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

“**Statewide Forest Resource Inventory**” or “**SFRPI**” means Victoria’s Statewide Forest Resource Inventory of Victoria’s public native forest resources;

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

“**Sustainable Yield**” means sustainable yield rate as defined in the *Forests Act 1958* (Vic);

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

“**Wilderness Values**” means the values of the same name as defined in the JANIS Report;

“**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;

“**Woodchips and Unprocessed Wood**” means those goods within the meaning of the Export Control (Hardwood Wood Chips) (1996) Regulations; the Export Control (Regional Forest Agreements) Regulations; and the Export Control (Unprocessed Wood) Regulations;

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

“**World Heritage Values**” means features, formations, areas, and sites of outstanding universal value within the meaning of Article 2 of the *Convention Concerning the Protection of the World Cultural and Natural Heritage*, also known as the World Heritage Convention.

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.

#### **Definition of Region**

4. The area covered by this Agreement is the Central Highlands Region as shown in Map 1 accompanying this Agreement.

#### **Duration of Agreement**

5. This Agreement takes effect either:
- (a) upon signing by both parties; or
  - (b) upon the commencement of regulations amending Item 2 of the Schedule to the Export Control (Hardwood Wood Chips) (1996) Regulation with the effect of changing the description of the Central Highlands Region of Victoria to accord with the boundaries of that Region as shown in Map 1 accompanying this Agreement;

whichever the later, and will remain in force for twenty years.

6. The process for extending the Agreement for a further period will be determined jointly by the Parties as part of the third five yearly review.

#### **Basis of Agreement — National Forest Policy Statement**

7. Parties confirm their commitment to the goals, objectives and implementation of the *National Forest Policy Statement (NFPS)* by:

- developing and implementing Ecologically Sustainable Forest Management (ESFM);
- establishing a Comprehensive, Adequate and Representative (CAR) reserve system; and
- facilitating the development of an internationally competitive wood production and wood products industry.

#### **Changes to the Agreement**

8. This Agreement may only be amended with the consent, in writing, of both Parties. Parties agree to work cooperatively to address any differences between them as to the interpretation or implementation of the Agreement.

#### **Dispute Resolution**

9. The Parties agree that if a dispute arises between the Parties regarding this Agreement it must be resolved expeditiously in accordance with the provisions of clauses 10 to 14.

10. 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 10 to 14.

11. Within 14 days of the notice under clause 10 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.

12. If the dispute is not settled under clause 11 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.

13. The costs of a mediator appointed under clauses 11 or 12 are to be shared equally between the Parties.

14. Each of the Parties agrees to use its best endeavours to resolve the dispute through mediation.

#### **Notices**

15. 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, Treasury Place, EAST MELBOURNE VIC 3002

THE COMMONWEALTH: The Secretary, Department Of The Prime Minister And Cabinet, 3-5 National Circuit, BARTON ACT 2600

### **PART 2**

16. 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. Where there are references in this Part to obligations which are referred to in Part 3 and are intended to be legally binding, they are only included in Part 2 insofar as they provide context and for the sake of completeness so that the whole scheme which the Parties wish to implement is set out in this Part. The inclusion of references to these legally binding obligations in Part 2 does not derogate from the Parties intent that they be legally binding in Part 3.

#### **FUNCTIONING OF THE AGREEMENT**

##### **Relationship to the Interim Forest Agreement**

17. This Agreement replaces the Interim Forest Agreement, signed by the Commonwealth and Victorian governments on 27 January 1996, in relation to the Central Highlands Region.

##### **Relationship to Statutory Obligations**

18. This Agreement cannot impose on either Party or a third party any obligation that is inconsistent with Australia's international obligations, or a law of the Commonwealth or of Victoria.

19. Neither Party will seek to use existing or future legislation to undermine or impede this Agreement.

20. The Commonwealth, in signing the Agreement, confirms that its obligations under the *Australian Heritage Commission Act 1975* have been met.

21. Parties will manage their respective responsibilities with regard to the National Estate in accordance with the provisions of this Agreement as detailed in Attachment 3.

22. 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 3 as being agreements and confirmations on the part of the Commission.

23. The Commonwealth, in signing the Agreement, confirms that its obligations under the *Environment Protection (Impact of Proposals) Act 1974* have been met. The Commonwealth also confirms that, under the administrative procedures of the Act, any activities covered by the Agreement, including the 5 yearly review and minor amendments to the Agreement, will not trigger further environmental impact assessment.

24. The Commonwealth, in signing the Agreement, confirms that its obligations under the *Endangered Species Protection Act 1992* have been met.

25. The Commonwealth notes that its obligations to promote endangered species protection will involve ongoing cooperative work with Victorian agencies concerning the Central Highlands.

26. Parties agree to actively investigate, and participate in, World Heritage assessment of the Australia-wide Eucalypt theme, including any potential contribution from the Central Highlands region.

27. Parties note that in order to progress work and then proceed to World Heritage nomination, the agreement of all relevant governments will be required.

28. Parties agree that any potential World Heritage nomination involving areas in the Central Highlands will be from within the CAR Reserve System.

29. The Commonwealth agrees that it will give full consideration to the potential socio-economic consequences of any World Heritage nomination of places in the Central Highlands and that any such nomination will only occur after the fullest consultation and with agreement of the State.

30. The Parties agree that before any World Heritage nomination is made:

- all necessary management arrangements, including joint policy coordination arrangements will be agreed; and
- all related funding issues will be resolved to the satisfaction of both Parties.

31. Parties note that current Commonwealth export arrangements provide that, after 31 December 1999, exports of hardwood woodchips from native forests will only be permitted from areas covered by an RFA.

32. Parties note that no controls under the *Export Control Act 1982* will apply to hardwood woodchips or unprocessed wood sourced from the Central Highlands region while this Agreement is in place.

33. The Commonwealth notes Victoria's intention to separate more clearly its commercial forestry activities within native State forests from the broader policy, strategic planning and regulatory functions associated with the management of those forests. Victoria also confirms its commitment to the ongoing implementation of its plans, codes and prescriptions relevant to the achievement of ESFM.

34. The Commonwealth notes Victoria's change to the administration arrangements applying to the management of its parks, and that the primary emphasis of management will continue to be the conservation and protection of environmental and heritage values.

#### **Milestones**

35. This Agreement establishes milestones (Attachment 4) and Parties will report annually on their achievement for the first five years, and then as they fall due and as part of the 5 yearly review, using an appropriate public reporting mechanism.

#### **Five yearly review**

36. Within each five year period, a review of the performance of the Agreement will be undertaken. The purpose of the five yearly review is to provide an assessment of progress of the Agreement against the established milestones, and will include:

- the extent to which milestones and obligations have been met including management of the National Estate;
- the results of monitoring of sustainability indicators; and
- invited public comment on the performance of the Agreement.

Each review will be scheduled concurrent with the five yearly reviews required for the East Gippsland RFA.

37. While the review process will not open up the Agreement to re-negotiation, both Parties may agree to some minor modifications to incorporate the results of the review.

38. The outcomes of the review will be made public. The mechanism for the review will be determined by both Parties before the end of the five year period and the review will be completed within three months.

#### **ECOLOGICALLY SUSTAINABLE FOREST MANAGEMENT**

39. 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 a CAR Reserve System (Attachment 1);
- the development of internationally competitive forest products industries; and

- a fully integrated and strategic forest management system capable of responding to new information.

40. The Parties agree that Victorian processes and systems provide for ecologically sustainable management of forests in the Central Highlands and that these processes and systems are accredited in clause 47 of this Agreement.

#### **Monitoring, Reporting and Consultative Mechanisms**

41. Victoria will report on the results of monitoring of sustainability indicators.

42. Comprehensive Regional Assessments and the development of this Agreement have provided extensive opportunities for public participation and reporting. Parties recognise that the public reporting activities and on-going opportunities for public participation and consultation associated with existing Victorian and Commonwealth processes and instruments will continue. These processes are listed in Attachment 5.

43. In addition to these activities, Victoria agrees to publish future reports of audits of compliance with the Code of Forest Practices for Timber Production. Supporting documents will also be publicly available.

44. Victoria will further develop the transparency and accountability of its forest management processes through the implementation of an on-going quality assurance program. The program will be implemented, within three years, utilising expertise external to the forest agency in the Department of Natural Resources and Environment or its equivalent.

45. Victoria undertakes to:

- (a) complete and publish regional prescriptions for timber production by the end of 1998;
- (b) use its best endeavours to complete and publish management plans for all National and State Parks by the end of 1998;
- (c) continue to manage the dedicated reserves within the CAR Reserve System in accordance with the relevant government approved recommendations of the Land Conservation Council;
- (d) manage cultural values, both Aboriginal and non-Aboriginal, in the Central Highlands, based on Statewide Guidelines for the Management of Cultural Heritage Values in Forests, Parks and Reserves which will be jointly agreed; and
- (e) implement the Integrated Forest Planning System and the Statewide Forest Resource Inventory (SFRI) in the Central Highlands in time for the next review of sustainable yield due in 2001.

#### **Accreditation**

46. Parties agree that Victoria's forest management system (including its legislation, policies, Codes, plans and management practices) as described in the Statewide Assessment of Ecologically Sustainable Forest Management and including responses reported in Chapter 5 of the Central Highlands RFA Directions Report provides for continuing improvement in relation to ESFM.

47. The Commonwealth accredits Victoria's forest management system for the Central Highlands as amended by this Agreement. The system includes:

- the Forest Management Plan and the process for its review;
- the *Flora and Fauna Guarantee Act 1988*;
- the process for forecasting sawlog sustainable yield in the Central Highlands; and
- the systems and processes established by the Code of Forest Practices for Timber Production and the Code of Practice for Fire Management on Public Land.

#### **Sustainability indicators**

48. Parties agree that the current forest management system could be enhanced by further developing appropriate mechanisms to monitor and review the sustainability of forest management practices. To ensure that this occurs, Parties agree to establish an appropriate set of sustainability indicators to monitor forest changes. Any indicators established will be consistent with the Montreal Process Criteria (as amended from time to time), the current form of which is specified in Attachment 7, and will take into account the framework of regional indicators developed by the Montreal Process Implementation Group (MIG). Indicators will be practical, measurable, cost-effective and capable of being implemented at the regional level.

49. In developing effective indicators, Parties agree to take into account the results of the Forest and Wood Products Research and Development Corporation's pilot studies for the development of effective regional indicators.

50. Development of indicators, and collection of results for those indicators which can be readily implemented, will be completed in time to enable assessment during the first review of this Agreement.

#### **Private land**

51. The Parties reaffirm their commitments made in the NFPS to the conservation and management of the private forest estate. The Parties note that Victoria has, under the *Planning and Environment Act 1987*, native vegetation retention controls to regulate the clearance of native forest on private land.

52. Victoria will continue to encourage private forest owners to ensure that their management operations are consistent with the Code of Forest Practices for Timber Production, and to have in place adequate mechanisms to protect nature conservation and catchment values.

53. Ecological vegetation classes which are priorities for the CAR Reserve System and which occur on private land are listed in Attachment 1. Parties agree that the EVCs listed in Attachment 1 can be managed to protect values consistent with the JANIS Reserve Criteria

54. or could contribute to the CAR Reserve System through a range of mechanisms, with the consent of the land owner.

#### **Threatened Flora and Fauna**

55. The Parties agree that the CAR Reserve System, actions under the *Flora and Fauna Guarantee Act 1988* and the *Endangered Species Protection Act 1992*, and the application of a range of management strategies in the Central Highlands Forest Management Plan provide for the protection of rare or threatened flora and fauna species and ecological communities.

56. Where threatened species, ecological communities and threatening processes restricted to Victoria are listed under both the *Flora and Fauna Guarantee Act 1988* and the *Endangered Species Protection Act 1992*, any new or revised Action Statements will be jointly prepared to meet the requirements of both Acts. Where the Action Statements meet the requirement of the *Endangered Species Protection Act 1992*, the Commonwealth intends to adopt Action Statements as Recovery Plans under Section 46 of the *Endangered Species Protection Act 1992*.

57. Recovery Plans for items listed under both Acts and extending beyond Victoria will be prepared jointly with Victoria and other relevant governments, and incorporate the agreed Action Statement as the Victorian component of the Recovery Plan.

58. Parties will continue to consult on the priorities for listing threatened species, ecological communities and threatening processes, and the preparation of Action Statements and Recovery Plans, recognising that priorities can change in the light of new information. Currently agreed priorities and commitments for the next five years are outlined in Attachment 2.

59. Parties reaffirm their commitment that species in the Central Highlands for which Recovery Plans or Action Statements have already been prepared will have all recommended actions completed or significantly advanced in accordance with the timelines specified in the Recovery Plans or Action Statements.

60. Parties agree that within five years pest plant and pest animal control programs will be developed in accordance with the Central Highlands Forest Management Plan.

#### **THE CAR RESERVE SYSTEM**

61. Parties agree that the primary function of the CAR Reserve System is to ensure the conservation and protection of environment and heritage values.

62. Parties agree that the CAR Reserve System as identified on Map 1 and described in Attachment 1, in conjunction with the arrangements proposed for private land in Attachment 1, satisfies the JANIS Reserve Criteria. Each element of the reserve system will be administered in accordance with Victorian legislation.

63. Victoria agrees to implement the CAR Reserve System described in Attachment 1 and identified on Map 1.

64. Parties agree that changes to that component of the CAR Reserve System in State forest will only occur in accordance with this Agreement, will not lead to a net deterioration in the protection of identified CAR values<sup>1</sup>, and will be publicly available.

65. Parties agree that best endeavours will be used to maintain the levels of protection of national estate values in a regional context, however, minor changes to the levels of protection of individual values may occur as a result of changes to the CAR Reserve System in State forest.

66. Victoria agrees to produce and publish by 30 June 1998 the Central Highlands Forest Management Plan that reflects the outcomes of this Agreement.

67. Parties recognise that all Victorian rainforest is protected from harvesting through the range of mechanisms described in Attachment 1.

#### **INDUSTRY DEVELOPMENT**

68. The Parties agree that State forest outside the CAR Reserve System is available for timber harvesting in accordance with the Central Highlands Forest Management Plan and the Code of Forest Practices for Timber Production. Victoria also confirms that the sustainable yield for forests for the Central Highlands will continue to be based on areas available for timber harvesting outside the CAR Reserve System.

69. Parties agree that any changes to the area of State forest will not lead to a net deterioration in the timber production capacity of those areas available for harvesting in terms of volume, species and quality.

70. The Parties acknowledge that the forest-based industries in the Central Highlands make a significant contribution to both the regional and State economies and are an essential component of many communities in the region. The Parties intend that this Agreement will enhance opportunities for further growth and development of forest-based industries in the Central Highlands and provide long-term stability for these industries. The Parties therefore acknowledge that this Agreement must provide enhanced security of access to resources on forested land for the life of the Agreement. This, in turn will facilitate industry development through:

- new investment, plantation development, reforestation, downstream processing, value-adding and jobs growth in forests-based industries;
- further introduction of new technology, enhanced utilisation of regrowth timber for sawn products, thinning of regrowth forests and more efficient utilisation of residual wood;
- investment in mineral exploration and mining; and
- tourism and recreation investment.

71. As part of providing greater security of access to forest resources, the Commonwealth will not prevent enterprises obtaining, using or exporting timber, woodchips or unprocessed wood products sourced from the Central Highlands region in accordance with this Agreement.

72. The Parties acknowledge that this Agreement is expected to provide as a minimum the current legislated sustainable yield of D+ sawlogs (415,000 m<sup>3</sup> per annum) from the Dandenong, Central and Central Gippsland Forest Management Areas (FMAs) for the next twenty years, but recognise that sustainable yield levels in Victoria are subject to periodic review. Economic and social issues have been taken into account in providing a land base that is expected to deliver these yields. Sustainable yield levels in these FMAs will be reviewed when new resource information becomes available from the Statewide Forest Resource Inventory (SFRI) which should be completed by the end of 1999. When the sustainable yield for these FMAs is confirmed following this review, Victoria agrees to supply the revised sustainable yield level from these FMAs to the industry, in accordance with the requirements of the Forests Act. However, the Parties note that Victoria is committed to supply, as a minimum, the current licensed volume of D+ sawlogs (345,000m<sup>3</sup> per annum) for the next twenty years from these FMAs. The Parties also agree that Victoria will manage the forest estate in the Central Highlands to at least maintain its timber production capacity in terms of volume, species and quality.

73. Wherever possible Victoria will enhance Statewide silvicultural programs and reforestation works to improve the productive capacity of State forests.

74. Both Parties are committed to the implementation of a Hardwood Timber Industry Development and Restructuring Program for Victoria. Parties agree to develop a Memorandum of

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<sup>1</sup> Identified CAR values are those conservation values addressed in the JANIS Report.

Understanding for a joint Commonwealth-Victorian Hardwood Timber Industry Development and Restructuring Program which will establish the respective roles and responsibilities of the two governments in administering the program. The Parties further agree that a total of \$27.6 million is available to implement the program across the five Victorian RFA regions (refer clause 91).

#### **INDIGENOUS HERITAGE**

75. The Parties agree to develop a package of measures that will be implemented by Victoria to ensure the appropriate management of Aboriginal heritage including the maintenance of traditional historic uses and values, in the Central Highlands. These measures are the development of: Statewide guidelines for the management of cultural heritage values; provision for participation and negotiation through the establishment of formal consultation mechanisms with local Aboriginal communities; modelling to establish priority areas for future surveys of Aboriginal sites; and training of staff.

76. 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*.

#### **PLANTATIONS**

77. The Parties recognise that export controls have been removed from unprocessed wood and woodchips sourced from Victorian plantations in accordance with the Export Control (Unprocessed Wood) Regulations.

#### **OTHER FOREST USES**

78. Parties agree that forest uses other than timber production will be determined in accordance with Victorian legislation with due regard for protection of environmental and heritage values. In some limited circumstances that do not relate to the substance of this Agreement (for example foreign investment approval, export controls for non-forest products and major infrastructure developments) Commonwealth legislative provisions may also apply.

79. Parties recognise that under legislative provisions in Victoria, issuing of new exploration licences and subsequent mining is not permitted in National Parks, Wilderness Parks, State Parks and Reference Areas.

80. Parties recognise that exploration and mining may be permitted in parts of the CAR Reserve System, other than those identified in Clause 78, where the identified conservation values are not incompatible with exploration and mining. To this end, Victoria will ensure that in accordance with relevant Victorian legislation proposed Mining Operations in the CAR Reserve System will be subject to an Environmental Effects Statement or planning permission (eg planning permit) as required. In the case of exploration, the provisions of the *Mineral Resources Development Act 1990* require the application of conditions to protect environmental values, and may in the case of proposed road construction or bulk sampling require an exploration impact statement. Victoria will ensure these provisions apply to proposed exploration activities in the CAR Reserve System. The Parties note that, in accordance with the Central Highlands Forest Management Plan, no new activities under the *Extractive Industries Development Act 1995* will be permitted in the State forest component of the CAR Reserve System unless it will make a significant contribution to the regional economy and unless the values within the CAR Reserve System can be maintained or provided for elsewhere.

81. Rehabilitation of any mining site will be in accordance with the provisions of the *Mineral Resources Development Act 1990* or the *Extractive Industries Development Act 1995*, and it will aim to achieve world's best practice.

82. The Parties recognise that the Central Highlands region is an important source of water, particularly for Melbourne. Victoria will develop a long term timber harvesting and water production strategy for the Thomson Reservoir catchment in accordance with the Central Highlands Forest Management Plan when timber resource data (SFRI) becomes available in 1999.

#### **COMPETITION PRINCIPLES**

83. Parties recognise that under the Competition Principles Agreement, Governments aim to achieve more transparency and greater efficiency in Government owned business enterprises. The Commonwealth agrees that the day to day pricing and allocation arrangements for wood from public forests are matters for Victoria. Victoria confirms its commitment to the pricing and allocation principles set out in the National Forest Policy Statement. Victoria confirms that legislation and policies relevant to the allocation and pricing of hardwood logs from State forests will be reviewed as part of the Competition Principles Agreement before the end of 1999. Competitive neutrality principles will be taken into account in any changes following the review.

## **RESEARCH**

84. The results of the Comprehensive Regional Assessments of the forest values of the Central Highlands indicated a number of areas requiring further research. The Compendium of Victorian Forest Research (in prep) will provide a bibliography of research in progress as well as published and unpublished works. Parties have outlined Statewide research priorities in Attachment 6.

85. Parties agree to consult each other in the development of future research projects that may affect the Agreement and note that the subject areas and priorities may change throughout the duration of the Agreement.

86. Parties agree to make publicly available, wherever possible, research reports relevant to this Agreement.

## **DATA AGREEMENT**

87. Parties note the development of a State-wide data agreement. Both Parties agree to develop a schedule to the State-wide agreement concerning the management of the data used to develop this Agreement within six months of signing. The data agreement covers:

- ownership and custodianship;
- archival lodging and location and associated documentation standards; and
- access, use and maintenance of the data.

Parties also agree to lodge archival copies of data within six months of signing this Agreement.

## **PART 3**

### **Nature of Obligations under this Part**

88. 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**

89. Victoria will:

- 89.1. Complete and publish regional prescriptions for timber production by the end of 1998;
- 89.2. Implement the Integrated Forest Planning System and the Statewide Forest Resource Inventory (SFRI) in the Central Highlands in time for the next review of sustainable yield due in 2001;
- 89.3. Publish future reports of audits of compliance with the Code of Forest Practices for Timber Production;
- 89.4. Review legislation and policies relevant to the allocation and pricing of hardwood logs from State forest as part of the Competition Principles Agreement before the end of 1999;
- 89.5. Use its best endeavours to complete and publish management plans for all National and State Parks by the end of 1998.

90. The Commonwealth will:

- 90.1. Maintain accreditation of Victoria's forest management system for the Central Highlands as amended by this Agreement providing changes to the system are consistent with the provisions of this Agreement;
- 90.2. Not prevent enterprises obtaining, using or exporting timber, woodchips or unprocessed wood products sourced from the Central Highlands region in accordance with this Agreement.

### **Compensation**

91. The Parties agree that:

- 91.1. If to protect the environment and heritage values in native forests and in connection therewith the protection of:
  - (a) CAR Values; or
  - (b) National Estate Values; or
  - (c) World Heritage Values; or
  - (d) 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:

- (e) 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 in which mineral exploration and mining is prohibited pursuant to a statutory licence, permit or authority permitting those Mining Operations which was in force immediately prior to the announcement of the proposed Commonwealth Action; or,
- (f) 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 in which mineral exploration and mining is prohibited 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,
- (g) 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 90.2 to 90.20.

91.2. Subject to:

- (a) clauses 90.3, 90.4, 90.5, 90.6, 90.8, 90.9, 90.10, 90.11 and 90.12 the compensation to be paid by the Commonwealth to the State in accordance with clause 90.1 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 90.1 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 subparagraph (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 90.3, 90.4, 90.5, 90.6, 90.7, 90.8, 90.10, 90.11 and 90.12 the compensation to be paid by the Commonwealth to the State in accordance with clause 90.1 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 90.1 occurred, by any person carrying on Mining Operations on the land pursuant to a statutory licence, permit or authority permitting those operations which was in force immediately prior to the announcement of the proposed Commonwealth Action.
- (c) clauses 90.3, 90.6, 90.8, 90.11 and 90.12 the compensation to be paid by the Commonwealth to the State in accordance with clause 90.1 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 90.1 occurred, by any person who, immediately before the announcement of the proposed Commonwealth Action, was contracted to construct that road.

91.3. 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.

91.4. 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.

91.5. 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.

91.6. 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.

91.7. To the extent that clause 90.2 (b) relates to loss or damage in respect of an exploration licence or search permit, 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 or permit relates that is affected by the Commonwealth Action; and
- (b) up to the loss in market value of that licence or permit resulting from the prevention of the Mining Operations.

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

91.9. For the purposes of clause 90.1(e), 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.

91.10. For the purposes of clause 90.1(f), 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.

91.11. No compensation is payable under clause 90.2 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.

91.12. Clause 90.2 does not apply so as to entitle the State to recover compensation more than once in respect of the same loss or damage.

91.13. 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 10.
- (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 10 to 14 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 1984* (Vic).

91.14. The procedure in relation to any arbitration required by reason of the provisions of clause 90.13 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 or Territory 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, in accordance with the *Commercial Arbitration Act 1984* (Vic), inform himself or herself in relation to any matter in such manner as the arbitrator thinks fit; provided that if the arbitrator takes advice from any person who is not a Party to this Agreement as to the matters in issue, 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.

91.15. Unless the Commonwealth appeals the decision of the arbitrator under the *Commercial Arbitration Act 1984* (Vic), and subject to clause 90.18, the Commonwealth undertakes to pay the State the amount of any award made by an arbitrator under clause 90.14 as a debt due to the State, within 60 days of the award.

91.16. 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.

91.17. Subject to clause 90.18(b), where the State receives monies as a trustee pursuant to clause 90.16, it will pay those monies to the person who sustained the relevant loss or damage within 30 days.

- (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 90.14 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 10 to 14; 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 1984* (Vic)
- (d) Subject to paragraph (e) of this clause, where an arbitration takes place in accordance with sub-paragraph (c)(ii), clauses 90.14 and 90.15 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.

91.18. Where the State:

- (a) has received monies as a trustee pursuant to clause 90.16; 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.

91.19. 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.

#### **Industry Development Funding**

92. The Commonwealth will, subject to the terms and conditions under any Commonwealth Act which appropriates money, provide an amount of \$13.8 million and Victoria will provide \$13.8 million to implement a Hardwood Timber Industry Development and Restructuring Program subject to the development of a Memorandum of Understanding between the two Parties which establishes the respective roles and responsibilities of the two governments in administering the Program.

#### **Termination**

93. 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 10 to 14 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 62, being a failure to implement the CAR Reserve System described in Attachment 1 and to manage and conserve the identified CAR values; or
  - (ii) a failure to comply with clause 65, being a failure to produce and publish by 30 June 1998 the Central Highlands Forest Management Plan that reflects the outcomes of this Agreement; or
  - (iii) a failure to comply with publishing and/or reporting requirements in accordance with clauses 41 and 43 and 45(a); or
  - (iv) a failure to comply with clause 45(e), being a failure to implement the Integrated Forest Planning System and the Statewide Forest Resource Inventory (SFRI) in the Central Highlands in time for the next review of sustainable yield due in 2001; or

- (v) a failure by the State to observe the terms and conditions referred to in clause 91 or a failure to use the money referred to in clause 91 for the purpose for which it is appropriated;  
other than a failure of a minor nature which is not one or part of a series of deliberate or reckless failures of a minor nature; and 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 10 to 14.
94. 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 10 to 14 have been observed and the Commonwealth has been given a 90 day period of notice on:
    - (i) a breach by the Commonwealth of clause 91, being a failure to pay the financial assistance in accordance with that clause; or
    - (ii) a failure by the Commonwealth to comply with clause 90, being a failure to pay compensation due under that clause;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 10 to 14.