FORESTRY PROPERTY BILL

Received from the House of Assembly and read a first time.

The Hon. K.T. GRIFFIN (Attorney-General): I move:
That this bill be now read a second time.
I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

I am pleased to bring before the House a Bill which provides improved investment security and support for the expansion of private forestry in South Australia. Although South Australia already has a well established private forestry sector, these measures seek to increase investment and expansion opportunities by addressing known impediments to plantation forestry development and investment security.

Increased investment in plantation forestry can play a key role in the economic development of the State and also help reduce Australia’s current trade deficit in wood and wood products. A major economic study completed in late 1998 revealed that the wood and wood products sector contributed approximately 29 per cent of the gross regional product within the State’s South East, while additionally it accounted for around 25 per cent of total employment in that Region, involving both direct and indirect employment. The same study also indicated that the forestry and wood processing sectors accounted for 34 per cent of all exports from the region. Apart from these specific economic benefits, plantation expansion can also provide significant greenhouse benefits through the sequestration of carbon.

Under the National strategy *Plantations for Australia: The 2020 Vision*, the Commonwealth, States and Industry are seeking to treble the area of Australia’s plantation forest estate by the year 2020.

The Bill before the House confirms the South Australian Government’s support for this National initiative and follows on from earlier commitments made under the National Forest Policy Statement to “establish a sound legal basis for separating the forest asset component from the land asset for the purposes of selling timber”. The Bill also provides certainty for plantation owners and potential investors by securing the rights to harvest plantations established for wood production.

The lack of a sound legal mechanism for clarifying ownership rights in relation to trees, in particular those trees grown on another person’s land, has long been identified as a major impediment to private forestry expansion, especially farm forestry.

Under common law, trees are regarded as part of the land to which they are attached and like other land fixtures, belong to the landowner. Unfortunately, this can often present a difficulty for investors growing trees on another person’s land, especially in terms of preserving separate ownership rights.

To date investors have relied on the use of leasehold and other contractual arrangements in order to secure separate tree ownership rights. While these common law arrangements have been used, they all have certain limitations, including limited flexibility and often inadequate security for the tree grower.

Having regard to the inherent limitations of these common law options, South Australia’s approach to this issue has been to develop specific legislation to provide a safe and secure investment environment, without burdening either the landowner or potential investor with unnecessary costs or restrictions.

The first part of the Bill allows for the secure ownership of trees separate from land ownership through the creation of an agreement between the landowner and tree owner known as a ‘forest property agreement’. Under such an agreement, individual ownership rights are clearly identified and separated, while the agreement is also capable of being noted as a form of covenant on the actual land Title. Such a mechanism is considered important in terms of enhanced investment security, while it will also provide greater flexibility and options for both investors and landowners, including the opportunity for land and trees to be traded independently.

Although this legislation will enable investors to participate in plantation development without the purchase of land, it will also enable landowners to participate without giving up land ownership rights. For example, it will cater for landowners who may wish to create an asset capable of later sale, while it will also facilitate possible joint venture arrangements.

One of the other important considerations in developing this Bill was the Kyoto Protocol and possible additional opportunities for the forestry sector arising from these international negotiations.

As forests absorb carbon dioxide they offer significant potential to reduce greenhouse gases and provide the additional opportunity for financial returns to the forest owner in the form of carbon credits under a possible future emissions trading scheme. As the international arrangements for emission trading are still being negotiated, there is no system in place at this stage to provide carbon credits to forest owners. The Commonwealth Government is currently developing a policy position on emission trading, involving the release of a number of discussion papers to progress the issue. Although it could be some considerable time before such a system is introduced, one of the key issues to emerge already is the question of ownership of carbon rights and future carbon credits.

While the focus of this Bill is on investment security and industry development, the Bill includes specific provisions which confer clear ownership in terms of carbon rights, and in particular, the commercial right to exploit the carbon absorption capacity of the relevant forest property.

These provisions will help provide greater legal recognition of such rights in advance of a possible future emission trading system and also enable investors to participate with greater confidence on the basis of the added security over these rights.

The second key element of the Bill is its aim to remove uncertainty in terms of plantation harvesting rights and thereby enhance investor confidence.

Where timber plantations are established for commercial purposes, plantation owners have a reasonable expectation, like other crop owners, that they can harvest their plantation and receive a return on their investment.

In view of the time it takes for forest plantations to reach maturity, plantation owners are exposed to a greater period of risk compared with other crops. In addition to the risk of physical damage from fire and other natural agents, there is also the risk that plantation owners may be prevented from harvesting their forest plantations due to possible future public or government intervention.

Subject to planning requirements being met to establish a plantation, normal plantation forestry operations, including harvesting, do not require any specific approvals at this present time. Notwithstanding current arrangements, there is a perceived risk with plantation investments that even after the owner has met all relevant environmental and associated requirements, plans to harvest the plantation may be thwarted through the intervention of another party.

Under the Bill, harvest security is achieved through a commercial forest plantation licence, which authorises normal forestry operations, including harvesting, and secures these rights under State law. The requirements to obtain a licence will be kept simple to ensure that plantation owners are encouraged to take advantage of the added security that this harvest guarantee will bring.

While the licence will confer certain rights to the plantation owner, it will not authorise the establishment of plantations contrary to the provisions of State and Local Government planning requirements. Potential investors will still need to comply with any relevant planning requirements.

Any other conditions that may be imposed under the licence would be confined to ensuring environmentally sustainable management practices are maintained over the full term of the licence. Like the forest property agreement, the licence would be readily transferable to facilitate any sale of the associated plantation to another party.

The commercial forest plantation licence and the forest property agreement are separate initiatives and although some plantations will be covered by both, they are independent of one another.

As a consequence, landholders growing trees on their own land, together with those growing trees on the land of another will be able to take advantage of either or both initiatives.

We are confident that this legislation will provide improved investment security and added incentives for plantation development in South Australia, and continue to support an industry of vital importance to this State.

I commend the Bill to the House.

**Explanation of Clauses**

**PART 1**

**PRELIMINARY**

*Clause 1: Short title*

This clause is formal. The measure is empowering and will come into operation on assent.

*Clause 2: Interpretation*

This clause contains definitions for the purposes of the measure.

*Clause 3: This Act to be read subject to the law of native title*

This clause makes it clear that the provisions of the Act do not derogate from the law of the Commonwealth and the State relating to native title.

**PART 2**

**FOREST PROPERTY AGREEMENT**

*Clause 4: Alienation of forest property*
Clause 9: Variation of rights under agreement
This clause provides for variation of a forest property agreement by further agreement. If the agreement is registered the consent of the holders of any registered encumbrances is required, subject to dispensation from the Court.

Clause 10: Revocation of agreement
This clause provides for revocation of a forest property agreement by further agreement or as contemplated by the agreement. A consensual agreement for revocation must be consented to by the holder of any registered mortgage or charge, subject to dispensation from the Court.

Clause 11: Termination of agreement on abandonment by forest property owner
Under this clause, the Court may, by order, terminate a forest property agreement and order that the land be discharged from the agreement, if satisfied that a forest property owner cannot be found or has abandoned the exercise of rights under the agreement.

Clause 12: Discharge of land from forest property agreement
This clause contemplates the interested person applying to the Court for an order that land be discharged from a forest property agreement on the basis that the agreement has been validly rescinded, avoided or otherwise terminated.

Clause 13: Applications for registration
This clause contains procedural requirements for applications for registration under the measure.

Clause 14: Application of relevant registration law
For the purposes of registration under a relevant registration law, a forest property agreement is to be regarded as a profit à prendre.

A relevant registration law may be the Real Property Act 1886 or the Registration of Deeds Act 1935.

PART 3
COMMERCIAL FOREST PLANTATION LICENCES

Clause 15: Commercial forest plantation licences
This clause empowers the Minister to grant a licence in respect of a commercial forest plantation authorising forestry operations, including harvesting, in respect of the plantation. The plantation must be lawfully established.

If a licence is granted, operations authorised by the licence may be undertaken despite the provisions of any other law to the contrary and without any further authorisation, consent or approval under any other law.

PART 4
REGULATIONS

Clause 16: Regulations
This clause provides general regulation making power.

SCHEDULE
Amendment of Real Property Act 1886
The amendment defines easement to include a profit à prendre so as to make clear the registration procedures that are to apply in relation to an interest of that class, such as a forest property agreement.

The Hon. P. HOLLOWAY secured the adjournment of the debate.