

**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 land owner 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 gas emissions and also the potential 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 would 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*

This is the central clause establishing forest property agreements—an agreement between the owner of land and another under which forest vegetation is to be grown for the benefit of the other.

To enter into an agreement the land holder must be an owner in fee simple or a lessee from the Crown (see definition of owner).

Forest vegetation is defined broadly to mean trees and other forms of forest vegetation including—

- roots or other parts of the trees or other forest vegetation that lie beneath the soil; and
- leaves, branches or other parts or products of a trees or other forest vegetation,

but excluding edible fruit.

The person for whose benefit the forest vegetation is to be grown is defined as the forest property owner for the purposes of the measure.

Subclause (3) provides that a forest property agreement may contain provisions—

- conferring on the forest property owner rights to enter the land to plant, maintain and harvest forest vegetation; and
- requiring the owner of the land, the forest property owner, or both, to take specified action for cultivation, maintenance and care of the forest vegetation; and
- dealing with the duty of care to be exercised by each party to the other; and
- dealing with any other incidental matter.

#### *Clause 5: Registration of forest property agreement*

This clause contemplates registration of a forest property agreement.

Registered is defined to mean—

- in relation to a forest property agreement relating to land alienated in fee simple from the Crown—

- if the land has been brought under the *Real Property Act 1886*—registered under that Act or noted on the certificate of title to the land; or

- if the land has not been brought under the *Real Property Act 1886*—registered under the *Registration of Deeds Act 1935*;

- in relation to a forest property agreement relating to land subject to a Crown lease—registered or noted in the Register of Crown Leases.

The clause requires consent of the holder of any registered encumbrance in the land, ie a life estate or a lease or a mortgage, charge or encumbrance securing a monetary obligation.

The Supreme Court or District Court may dispense with consent in the ground that the consent has been unreasonably withheld or there is some other good reason to dispense with it.

#### *Clause 6: Nature of interest of forest property owner*

This clause sets out the interests conferred on a forest property owner under a forest property agreement as follows:

- ownership of the forest vegetation to which it relates; and
- a right (exclusive of the right of the owner of the land) to the commercial exploitation of the carbon absorption capacity of the relevant forest vegetation; and
- an interest in the nature of a profit à prendre in the land on which the forest vegetation is being, or is to be, grown.

If the agreement is registered, the interests will be effective at law and have priority over—

- the interests of the holders of encumbrances over the land who consented to the registration of the forest property agreement or whose consent was dispensed with; and
- the interests of the holders of encumbrances over the land registered after the registration of the forest property agreement; and
- the interests of all persons with unregistered interests in the land or the forest vegetation.

If the agreement is not registered, the interests are equitable in nature and are liable to be defeated by a bona fide purchaser for value without notice.

#### *Clause 7: Dealing with interest of forest property owner*

This clause contemplates the forest property owner mortgaging, charging or otherwise dealing with or disposing of the interest conferred by a forest property agreement. Consent to the transaction is required by the owner of the land and the holder of any prior registered mortgage or charge, subject to dispensation from the Court. The clause also contemplates registration of the transaction if the agreement is registered.

#### *Clause 8: Enforceability of registered forest property agreement and against successors in title to the original parties*

This clause makes it clear that a registered forest property agreement is binding on successive owners of the land and successive forest property owners.

#### *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 an 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.