

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

FOREST PROPERTY ACT 2000

No. 50 of 2000

[Assented to 20 July 2000]

An Act to encourage commercial investment in forest property; to amend the Real Property Act 1886; and for other purposes.

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SCHEDULE *Amendment of Real Property Act 1886*

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Forest Property Act 2000*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act—

"**Court**" means the Supreme Court or the District Court;

"**encumbrance**" means—

- (a) a life estate or a lease; or
- (b) a mortgage, charge or encumbrance securing a monetary obligation;

"**forest vegetation**" means trees and other forms of forest vegetation including—

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

but does not include edible fruit;

"**forest property agreement**"—*see section 5*;

"**forest property owner**" means the person for whose benefit forest vegetation is, or is to be, grown on another's land under a forest property agreement;

"**owner**" of land means—

- (a) the owner of an estate in fee simple in the land; or
- (b) a person who holds a leasehold estate in land from the Crown;

"**registered**" means—

- (a) in relation to a forest property agreement relating to land alienated in fee simple from the Crown—
 - (i) 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
 - (ii) if the land has not been brought under the *Real Property Act 1886*—registered under the *Registration of Deeds Act 1935*;

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

"relevant registration law" means—

- (a) in relation to an agreement or transaction registered (or to be registered) under the *Real Property Act 1886*—the *Real Property Act 1886*;
- (b) in relation to an agreement or transaction registered (or to be registered) under the *Registration of Deeds Act 1935*—the *Registration of Deeds Act 1935*.

This Act to be read subject to the law of native title

4. This Act is to be read subject to the law of the Commonwealth and the State relating to native title.

PART 2
FOREST PROPERTY AGREEMENT

Alienation of forest property

5. (1) An owner of land may enter into an agreement (a forest property agreement) under which forest vegetation is to be grown on the land for the benefit of another (the forest property owner).

(2) A forest property agreement—

- (a) must be in writing; and
- (b) must state that it is made under this Act; and
- (c) must identify the land to which it applies; and
- (d) must describe present and future forest vegetation to which it applies with sufficient particularity to enable it to be clearly identified; and
- (e) must specify a date on which, or circumstances in which, the agreement will terminate; and
- (f) must comply with any requirements imposed by the regulations.

(3) A forest property agreement may—

- (a) confer on the forest property owner rights to enter the land to plant, maintain and harvest forest vegetation; and
- (b) require 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
- (c) deal with the duty of care to be exercised by each party to the other; and
- (d) deal with any other incidental matter.

Registration of forest property agreement

6. (1) A forest property agreement may be registered.

(2) If land is subject to a registered encumbrance, a forest property agreement cannot be registered unless—

- (a) the holder of the encumbrance consents; or
- (b) the Court dispenses with the consent on the ground that—
 - (i) the consent has been unreasonably withheld; or
 - (ii) there is some other good reason to dispense with it.

Nature of interest of forest property owner

7. (1) A forest property agreement confers the following interests on the forest property owner:

- (a) ownership of the forest vegetation to which it relates; and
- (b) 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
- (c) 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.

(2) If the forest property agreement is unregistered, the interests conferred by the agreement on the forest property owner are equitable in nature (and therefore liable to be defeated by a purchaser who acquires an interest in the subject matter of the agreement in good faith, for value and without notice of the agreement).

(3) If the forest property agreement is registered, those interests are effective at law and have priority over—

- (a) the interests of the holders of encumbrances over the land—
 - (i) who consented to the registration of the forest property agreement; or
 - (ii) whose consent was dispensed with; and
- (b) the interests of the holders of encumbrances over the land registered after the registration of the forest property agreement; and
- (c) the interests of all persons with unregistered interests in the land or the forest vegetation.

Dealing with interest of forest property owner

8. (1) A forest property owner may mortgage, charge or otherwise deal with or dispose of the interest conferred by a forest property agreement.

(2) If the forest property agreement is registered, a transaction under this section may also be registered.

(3) A transaction under this section is ineffective unless—

- (a) the owner of the land consents; and
- (b) if the forest property owner's interest under the agreement is subject to a registered mortgage or charge—the mortgagee or chargee consents.

(4) However, the Court may dispense with a consent under subsection (3) on the ground that—

- (a) the consent has been unreasonably withheld; or
- (b) there is some other good reason to dispense with it.

Enforceability of registered forest property agreement by and against successors in title to the original parties

9. (1) A registered forest property agreement is binding on, and enforceable by and against, the persons for the time being registered as—

(a) the owner of the land to which the agreement relates; and

(b) the forest property owner.

(2) A person who ceases to be registered as—

(a) the owner of land to which a forest property agreement relates; or

(b) the forest property owner,

ceases to be bound by the registered forest property agreement (but this subsection does not relieve a person from liabilities that had accrued under the agreement before the person ceased to be registered).

Variation of rights under agreement

10. (1) A forest property agreement may be varied by agreement between the owner for the time being of the land to which the agreement relates and the forest property owner.

(2) If the forest property agreement is registered and the land is subject to a registered encumbrance, the agreement cannot be varied unless—

(a) the holder of the encumbrance consents; or

(b) the Court dispenses with the consent on the ground that—

(i) the consent has been unreasonably withheld; or

(ii) there is some other good reason to dispense with it.

(3) If the forest property agreement is registered, an agreement varying the forest property agreement does not take effect until it is also registered.

Revocation of agreement

11. (1) A forest property agreement may be revoked—

(a) by agreement between the owner for the time being of the land to which the agreement relates and the forest property owner; or

(b) if the agreement itself provides for unilateral revocation, or revocation in some other way—in accordance with the terms of the agreement.

(2) If the forest property owner's interest is subject to a registered mortgage or charge, a consensual agreement under this section is ineffective unless—

(a) the mortgagee or chargee consents; or

(b) the Court dispenses with the consent on the ground that—

- (i) the consent has been unreasonably withheld; or
- (ii) there is some other good reason to dispense with it.

Termination of agreement on abandonment by forest property owner

12. If the Court is satisfied, on application by an interested person, that a forest property owner—

- (a) cannot be found; or
- (b) has abandoned the exercise of rights under the forest property agreement,

the Court may, by order, terminate the agreement and order that the land be discharged from the agreement.

Discharge of land from forest property agreement

13. (1) If the Court is satisfied, on application by an interested person, that a forest property agreement has been validly rescinded, avoided or otherwise terminated, the Court may order that the land be discharged from the agreement.

(2) If a court avoids, cancels or otherwise terminates a forest property agreement, the Registrar-General must, on application by an interested person, discharge the land from the agreement.

Applications for registration

14. (1) An application for registration of a forest property agreement or a transaction affecting a forest property agreement or an interest conferred by the agreement may be made by or on behalf of a party to the agreement or transaction in a form approved by the Registrar-General.

(2) An application for registration of an order terminating a forest property agreement, or for discharging land from a forest property agreement, may be made by an interested person in a form approved by the Registrar-General.

(3) An application under this section—

- (a) must be endorsed with a certificate, signed by the parties to the agreement or transaction, or by a legal practitioner or registered conveyancer, certifying that the application is correct for the purposes of the relevant registration law; and
- (b) must be accompanied by—
 - (i) any survey, duplicate certificate of title, or other document the Registrar-General requires; and
 - (ii) evidence in a form required by the Registrar-General that any consent required under this Act has been given or the Court has dispensed with the consent; and
 - (iii) the fee required by the regulations.

Application of relevant registration law

15. The provisions of a relevant registration law apply to, and in relation to, the registration of a forest property agreement or a transaction affecting a forest property agreement as if a forest property agreement were a profit à prendre.

PART 3
COMMERCIAL FOREST PLANTATION LICENCES

Commercial forest plantation licences

16. (1) The Minister may, on application, grant a licence in respect of a commercial forest plantation (that has been, or is to be, lawfully established) authorising forestry operations, including harvesting, in respect of the plantation.

(2) A licence will be granted for a term, and subject to conditions (which may include conditions requiring the payment of fees), determined by the Minister.

(3) Operations authorised by a licence under this section may be undertaken (subject to the conditions of the licence)—

(a) despite the provisions of any other law to the contrary; and

(b) without any further authorisation, consent or approval under any other law.

(4) However, a licence cannot operate to the exclusion of a law that regulates the way in which, or the conditions under which, work is to be carried out.

**PART 4
REGULATIONS**

Regulations

17. The Governor may make regulations for the purposes of this Act.

SCHEDULE

Amendment of Real Property Act 1886

The *Real Property Act 1886* is amended by inserting after the definition of "dominant land" in section 3 the following definition:

"easement" includes a profit à prendre;.