

South Australia



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A.D. 2000

SOUTH AUSTRALIAN FORESTRY CORPORATION ACT 2000

No. 58 of 2000

[Assented to 20 July 2000]

An Act to provide for the management of public plantation forests; to establish the South Australian Forestry Corporation; to amend the Forestry Act 1950 and the Local Government (Forestry Reserves) Act 1944; and for other purposes.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *South Australian Forestry Corporation Act 2000*.

Commencement

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

Object

3. The object of this Act is to establish a statutory corporation as a business enterprise with the principal responsibility of managing plantation forests for the benefit of the people and economy of the State.

Interpretation

4. In this Act, unless the contrary intention appears—

"**board**" means the board of directors established as the governing body of the Corporation under Part 3;

"**Corporation**" means *South Australian Forestry Corporation* established under Part 2;

"**director**" means a member of the board under Part 3.

PART 2
CORPORATION

Establishment of South Australian Forestry Corporation

5. (1) *South Australian Forestry Corporation* is established.

(2) The Corporation—

- (a) has perpetual succession and a common seal; and
- (b) is capable of suing and being sued in its corporate name; and
- (c) has the functions and powers assigned or conferred by or under this or any other Act.

Application of Public Corporations Act 1993

6. The Corporation is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

Functions of Corporation

7. The Corporation has the following functions:

- (a) to manage plantation forests for commercial production; and
- (b) to encourage and facilitate regionally based economic activities based on forestry and other industries; and
- (c) to conduct research related to the growing of wood for commercial purposes; and
- (d) any other function conferred on the Corporation by this Act, any other Act or the Minister or delegated to the Corporation by the Minister.

Powers of Corporation

8. (1) The Corporation has all the powers of a natural person together with the powers specifically conferred on it by this or any other Act.

(2) The Corporation may exercise its powers within or outside the State.

Common seal and execution of documents

9. (1) The common seal of the Corporation must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

(2) The Corporation may, by instrument under its common seal, authorise a director, an employee of the Corporation (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Corporation subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Corporation.

(4) A document is duly executed by the Corporation if—

- (a) the common seal of the Corporation is affixed to the document in accordance with this section; or
- (b) the document is signed on behalf of the Corporation by a person or persons in accordance with an authority conferred under this section.

PART 3
BOARD

Establishment of board

10. (1) A board of directors is established as the governing body of the Corporation.

(2) The board consists of five members appointed by the Governor.

(3) The board's membership must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Corporation's functions and the proper discharge of its business and management obligations.

(4) At least one member of the board must be a woman and one a man.

(5) One director will be appointed by the Governor to chair meetings of the board.

(6) The Governor may appoint a director to be the deputy of the director appointed to chair meetings of the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.

(7) On the office of a director becoming vacant, a person may be appointed under this section to the vacant office.

Conditions of membership

11. (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.

(2) The Governor may remove a director from office on the recommendation of the Minister.

(3) The Minister may recommend the removal of a director on any ground that the Minister considers sufficient.

(4) The office of a director becomes vacant if the director—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or

(e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or

(f) is removed from office under subsection (2).

Vacancies or defects in appointment of directors

12. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

Remuneration

13. A director is entitled to be paid from the funds of the Corporation such remuneration, allowances and expenses as may be determined by the Minister.

Board proceedings

14. (1) A quorum of the board consists of three members.

(2) The director appointed to chair meetings of the board will preside at each meeting of the board at which he or she is present.

(3) If the director appointed to chair meetings of the board is absent from a meeting of the board, the following provisions apply:

- (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy will preside at the meeting;
- (b) in any other case—a director chosen by the directors present at the meeting will preside at the meeting.

(4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.

(5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

(6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—

- (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
- (b) each participating director is capable of communicating with every other participating director during the conference.

(7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

- (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
- (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(8) The board must cause accurate minutes to be kept of its proceedings.

(9) Subject to this Act, the board may determine its own procedures.

PART 4
STAFF

Staff of Corporation

15. (1) The chief executive of the Corporation will be appointed by the board with the approval of the Minister on terms and conditions approved by the Minister.

(2) The Corporation may appoint such other employees as it thinks necessary or desirable.

(3) Subject to subsection (4), an employee's appointment will be on terms and conditions fixed by the Corporation in consultation with the Commissioner for Public Employment.

(4) The Corporation must not, in fixing terms and conditions of employment by the Corporation, discriminate against employees appointed after the commencement of this Act by appointing them on terms and conditions that are less favourable than those applying to employees transferred to the Corporation's employment in accordance with Schedule 1.

PART 5
MISCELLANEOUS

Delegation to Corporation

16. (1) The Minister may delegate any of the Minister's powers or functions under any Act to the Corporation.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated by the Corporation.

(3) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the power of the delegator to act in any matter; and

(d) is revocable at will by the delegator.

Payment of rates

17. (1) Despite the provisions of the *Local Government Act 1999*, the Corporation is liable to pay rates, in respect of land managed by the Corporation for commercial purposes, to a council in accordance with that Act as if the Corporation owned a freehold estate in the land and were not an instrumentality of the Crown.

(2) A council must, after consultation with the Corporation, apply half of any amounts received from the Corporation in accordance with this section towards the maintenance or upgrading of roads affected by the Corporation's operations.

(3) Section 29(2)(b) of the *Public Corporations Act 1993* does not apply in relation to the Corporation.

Regulations

18. The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

SCHEDULE 1
Transitional Provisions

Interpretative provision

1. The Governor may, by proclamation, declare that a reference in an Act or instrument to a Minister is a reference to the Corporation and the proclamation has effect in accordance with its terms.

Vesting of property, rights, etc. in Corporation

2. (1) Subject to the *Forestry Act 1950*, as amended by schedule 2, the Corporation succeeds to all the property, rights, powers, liabilities and obligations of the Minister arising from the operation of the *Forestry Act 1950* as in force before the commencement of schedule 2.

(2) A certificate executed by the Minister certifying that any specified property, right, power, liability or obligation has vested in the Corporation by virtue of this clause is to be taken to be conclusive evidence of the matter so certified.

(3) An apparently genuine document purporting to be a certificate of the Minister under subclause (2) is to be presumed to be such a certificate in the absence of proof to the contrary.

(4) Despite section 29(1) of the *Public Corporations Act 1993*, where property vests by virtue of this clause in the Corporation, the vesting of the property, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

Application of Real Property Act

3. (1) The Registrar-General must, on the application of the Corporation, register the Corporation as the proprietor of an estate in land that has vested in the Corporation under this schedule.

(2) An instrument relating to land that has vested in the Corporation under this schedule must, if the instrument is executed by the Corporation and is otherwise in registrable form, be registered by the Registrar-General despite the fact that the Corporation has not been registered as the proprietor of the land under subclause (1).

Transfer of staff

4. (1) The Minister may, at any time within the period of three months immediately following the commencement of this schedule, transfer specified employees of the Department, or employees of the Department of a specified class, to the employment of the Corporation.

(2) An employee transferred under subclause (1) to the employment of the Corporation will have rights, obligations and liabilities in respect of his or her employment with the Corporation that are the same as or equivalent to those that would apply if—

- (a) the unit, within the Department for Administrative and Information Services, known as ForestrySA continued as a unit within the Public Service; and
- (b) the employee continued as an employee of the Department.

(3) Subclause (2) applies to an employee transferred to the employment of the Corporation subject to any industrial or enterprise award, determination or agreement that may become binding on the Corporation after the transfer.

(4) In this clause—

"employee of the Department" means—

- (a) a person employed in the Public Service in the Department for Administrative and Information Services; or

- (b) an employee of the Crown (other than a person employed in the Public Service) who is subject to the direction of the chief executive of the Department for Administrative and Information Services in that employment.

Appointment of first chief executive

5. (1) The first appointment to the position of chief executive of the Corporation is to be made by the Minister (but, on such an appointment having been made, the person so appointed will be taken to be an employee of the Corporation).

(2) Any subsequent appointment to the position of chief executive of the Corporation is to be made by the board under Part 4.

Annual report

6. The Corporation's report to the Minister on its operations during a financial year may incorporate a report on the operations of the unit, within the Department for Administrative and Information Services, known as ForestrySA during that financial year.

SCHEDULE 2
Consequential Amendments to Other Acts

Provision Amended	How Amended
<i>Forestry Act 1950</i>	
Section 2(1)	
Definition of "Chief Executive Officer"	Strike out this definition and substitute: "Corporation" means <i>South Australian Forestry Corporation</i> established under the <i>South Australian Forestry Corporation Act 2000</i> ;
Section 2(2)	Strike out "Chief Executive Officer" and substitute "Corporation".
Section 8	Strike out this section and substitute: Minister may delegate 8. (1) The Minister may delegate any of his or her functions, powers or duties under this Act (except this power of delegation)— (a) to a particular person or body; or (b) to the person for the time being occupying a particular office or position. (2) A delegation under this section— (a) must be by instrument in writing; and (b) may be absolute or conditional; and (c) does not derogate from the power of the delegator to act in any matter; and (d) is revocable at will by the delegator.
Section 8C(3)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500.
Section 8C(4)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500.
Section 8C(5)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500.
Section 8C(6)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000 or 2 years imprisonment.
Section 8E	Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or 6 months imprisonment.
Section 9	Strike out "Minister" and substitute "Corporation".

Section 9A	Strike out "Minister" and substitute "Corporation".
Section 10	Strike out "Minister" (wherever occurring) and substitute, in each case, "Corporation".
Section 11	Strike out "Minister" (twice occurring) and substitute, in each case, "Corporation".
Section 12	Strike out "Minister" and substitute "Corporation".
Section 13	Strike out this section and substitute: Sale of timber 13. The Corporation may sell or otherwise dispose of any trees or timber produced in forests under the control and management of the Corporation and any mill products produced in the milling or treatment of those trees or timber.
Section 14	Strike out this section.
Section 16	Strike out this section and substitute: Forest reserves cannot be sold 16. Nothing in this Act authorises the Corporation to sell a forest reserve or part of a forest reserve.
Section 16A	Strike out this section.
Section 17(1)	Strike out "Minister" (twice occurring) and substitute, in each case, "Corporation".
Section 17(3)	Strike out "him or her" and substitute "the authorised person".
Section 17(5)	Strike out "him or her" and substitute "the authorised person".
Section 18(1)	Strike out "Minister" (twice occurring) and substitute, in each case, "Corporation". Strike out the penalty provision and substitute: Maximum penalty: \$2 500 or 6 months imprisonment.
Section 18(3)	Strike out "Minister" and substitute "Corporation".
Section 19	Strike out this section.
Section 21	Strike out this section and substitute: Regulations 21. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) provide for the control, management and protection of forest reserves and all other property belonging to, or under the control or management of, the Corporation;
- (b) prohibit or regulate access to, use of or conduct on land belonging to, or under the control or management of, the Corporation;
- (c) provide for the grant by the Corporation of permits to enter or use land belonging to, or under the control or management of, the Corporation and for the revocation of such permits;
- (d) provide for the imposition of conditions on permits and the variation of such conditions;
- (e) fix fees for permits;
- (f) fix expiation fees (not exceeding \$105) for alleged offences against the regulations;
- (g) impose penalties (not exceeding \$750) for offences against the regulations.

(3) Regulations under this Act—

- (a) may be of general application or limited application;
- (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
- (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Corporation.

Local Government (Forestry Reserves) Act 1944

Section 3(1)	Strike out "made on the recommendation of the Conservator of Forests".
Section 3(2)	Strike out "made on the recommendation of the Conservator of Forests".
Section 5(1)	Strike out ", on the recommendation of the Conservator of Forests,".
Section 5(2)	Strike out ", on the recommendation of the Conservator of Forests," (twice occurring). Strike out "Conservator of Forests" (third occurring) and substitute "Minister".
Section 6(2)(c)	Strike out "Conservator of Forests" and substitute "Minister".
Section 7(1)	Strike out "Conservator of Forests" and substitute "Minister".
Section 7(2)	Strike out "Conservator of Forests" and substitute "Minister".
Section 8(1)	Strike out ", on the recommendation of the Conservator of Forests,".
Section 8(1)(c)	Strike out "Conservator of Forests" and substitute "Minister".
Section 9	Strike out this section.