

South Australian Forest Property Act Landowner Information

Legal instruments specific to forestry

Landowners who intend to establish forestry plantings in partnership with another party may benefit from the legal instruments outlined in this fact sheet.



Figure 1. Integrating forest plantings with farming (source: PIRSA)

The South Australian *Forest Property Act 2000* enables separate interests in private land, vegetation on that land, and carbon within that vegetation to be registered on a Land Title. It allows landowners, forest growers and investors to establish legal recognition of any partnerships created when planning plantation forests.

There are two types of Forest Property Agreements under the Act. A Forest Property (Vegetation) Agreement separates the ownership of plantation forests from the ownership of the land. It preserves the forest owner's rights regardless of any change in land ownership. A Forest Property (Carbon Rights) Agreement allows for the separation of carbon rights from forest ownership. It allows the carbon stored in the vegetation to be sold separately from the forest.

The Forest Property Act also facilitates forestry development through the provision of Commercial Forest Plantation Licences that secure a forest owner's right to harvest a plantation, subject to conditions.

Forest Property Agreement

While the Forest Property Act 2000 provides a legal framework for developing Forest Property Agreements, it is strongly advised landowners and owners of plantation and carbon rights seek legal advice to ensure the Forest Property Agreement addresses the issues all parties want covered.

The Australian Government recognises vegetation projects, including plantation forests, as a critical part of the climate change solution as they generate abatement by removing carbon dioxide from the atmosphere and storing it as carbon in plants as they grow. Projects adhering to the Australian Government's Emissions Reduction Fund and its associated vegetation and agricultural methods, can earn Australian Carbon Credit Units (ACCUs). Each ACCU represents one tonne of carbon dioxide equivalent greenhouse gas emissions stored or avoided.

A 'Forest Property (**Vegetation**) Agreement' empowers a landowner to vest in another, the ownership of trees that are growing or proposed to be grown on their land. It can also specify actions relating to the establishment, management and harvesting of trees, and provide the tree owner with the right to enter the land for these purposes.

A 'Forest Property (**Carbon Rights**) Agreement' empowers a tree owner to vest in another, ownership of the carbon rights of their trees, providing the owner of the land also agrees.



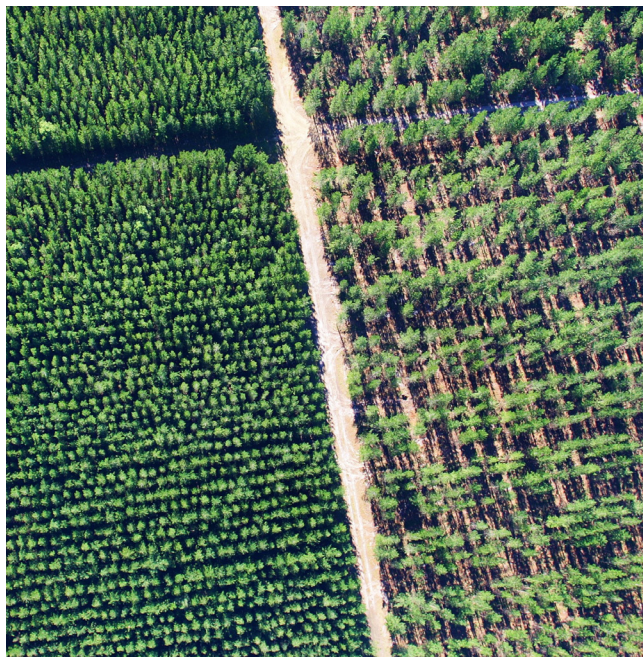


Figure 2. Aerial view of sustainably managed radiata pine plantations (source: PIRSA)

Co-benefits from vegetation carbon projects can include reducing soil erosion and improving water quality, improving farm resilience through diversified land use and income, and lowering the emissions profile of businesses. Although the Forest Property Agreement provisions provide investors with greater legal certainty and security in relation to carbon rights, the Act does not establish carbon trading arrangements.

In addition, the Planning and Design Code sets out planning controls for the assessment of a development application under the *Planning, Development and Infrastructure Act 2016*. The Code defines commercial forestry as “*the practice of planting, managing, and caring for forests that are to be harvested (or intended to be harvested) or used for commercial purposes (including through the commercial exploitation of the carbon absorption capacity of the forest).*”

Therefore, a forest planted for trading carbon rights is a commercial forest and is subject to forestry policies in the Code. It is also a change in land use and development approval is usually required. It is recommended that you speak with your local council to discuss planning requirements.

Format and Content of a Forest Property Agreement

The form and content requirements of a Forest Property Agreement are set out in Section 6 of the Act. For example, a Forest Property

Agreement must be in writing and describe present and future forest vegetation covered by the agreement. A copy of the Act can be obtained via the link at the end of this fact sheet.

In addition to the requirements set out in Section 6 of the Act, consideration should also be given to covering matters including:

- Fire protection arrangements, including responsibility for firebreaks
- Insurance and public liability
- Any fees for use of the land or agreed profit sharing arrangements
- Responsibility for outgoings (local government rates and other government charges)
- Vehicle access arrangements, including harvest and haulage vehicle access
- Entry notification requirements
- Site establishment techniques
- Fertiliser application requirements & restrictions
- Spraying and herbicide use
- Vermin and pest plant control
- Water use/access
- Environment protection measures
- Grazing arrangements if any
- On-site facilities and permitted improvements
- Required condition of land at the end of the agreement
- Provision for the parties involved to periodically review the agreement

This is not an exhaustive list of all matters that should be considered. It is important that parties obtain legal advice on issues that need to be incorporated into their Forest Property Agreement.

Registering a Forest Property Agreement

A Forest Property Agreement must be registered on the Land Title with Land Services SA to attain its full legal standing. To register a Forest Property Agreement, an application to the Registrar-General must be endorsed by the parties to the agreement and a duly authorised agent (legal practitioner or registered conveyancer). An Application to Note an Agreement form is available from Land Services SA.



Surveying an area covered by a Forest Property Agreement

Clear identification of the land involved in the agreement is in the interests of all parties concerned. It will also help to avoid future disputes and litigation.

If the Forest Property Agreement is established over a whole parcel of land, the agreement can be registered against the relevant Certificate of Title. No additional plan or survey is required.

However, where the Forest Property Agreement only covers a portion of land described in a Certificate of Title, adequate identification of the actual area covered is necessary. Where separate identification is required for this purpose, the nature and accuracy of the survey or plan will be a matter for the Registrar-General to determine and advise.

Commercial Forest Plantation Licence (Harvest Rights)

In general, evidence showing a plantation was legally established, such as local council development approval and/ or an establishment plan, can confirm a right to harvest. Where a landowner requires further legal evidence, specific 'right to harvest' provisions are obtainable under the *Forestry Property Act 2000* to facilitate the investment in long-term tree crops.

This is achieved through a Commercial Forest Plantation Licence, which authorises standard forestry operations, including harvesting, and secures these rights under State law. The licence is not compulsory; it is a voluntary mechanism for plantation owners who wish to take advantage of the Act's harvest security provisions. Commercial Forest Plantation Licences can cover both existing and proposed forest plantations.

While the Commercial Forest Plantation Licence will confer certain rights to the plantation owner, the licence holder still needs to comply with relevant Local, State and Commonwealth government laws. For example, those relating to occupational health and safety and environmental protection.

Applying for a commercial forest plantation licence

To apply for a Commercial Forest Plantation Licence, contact PIRSA Forestry. Contact details are at the end of this fact sheet.

The following documentation will assist with any application assessment:

- Evidence that the plantation to be covered by the licence has received development approval or, confirmation that no specific planning consent is required.
- A map or plan of a suitable scale (1:25 000 or greater) showing where the plantation is located or proposed. It should also identify the plantation area in relation to relevant property boundaries and other physical features (for example, named public roads) where possible.

Further information

Australian Government Clean Energy Regulator

Information on the Emissions Reduction Fund is available at cleanenergyregulator.gov.au

South Australian Legislation

A copy of the *Forest Property Act 2000* is available from legislation.sa.gov.au

Land Services SA

An application form to register a Forest Property Agreement is available from landservices.com.au

Contact Us:

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