

South Australia

# South Australian Timber Corporation (Sale of Assets) Act 1996

An Act to provide for privatisation of the South Australian Timber Corporation; and for other purposes.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Territorial operation of Act

### Part 2—Sale of assets

- 5 Sale of assets and liabilities
- 6 Transferred instruments
- 7 Legal proceedings
- 8 Registering authorities to note transfer
- 9 Stamp duty and financial institutions duty
- 10 Evidence
- 11 Saving provision

### Part 3—Preparation for sale of assets

- 12 Preparation for disposal of assets and liabilities
- 13 Protection for disclosure and use of information etc
- 14 Evidence

### Part 4—Miscellaneous

- 15 Act to apply despite *Real Property Act 1886*
- 16 Interaction between this Act and other Acts

### Schedule 1—Staff and superannuation

- 1 Interpretation
- 2 Superannuation—State Scheme contributors who have reached the age of 55 years
- 3 State Scheme contributors who have not reached the age of 55 years
- 4 Non-application of certain provisions of the *Superannuation Act 1988*
- 5 Extension of time
- 6 Arrangement under section 5 *Superannuation Act 1988*
- 7 Transfer of Forwood employees

### Schedule 2—Transitional provisions

- 2 Building and development work regarded as complying

## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *South Australian Timber Corporation (Sale of Assets) Act 1996*.

### 3—Interpretation

In this Act, unless the contrary intention appears—

*asset* means—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property; or
- (b) a present, contingent or future right, power, privilege or immunity,

(and includes a present or future cause of action in favour of the Corporation, Forwood or a Forwood Subsidiary);

*authorised project*—see section 12(1);

*Corporation* means the South Australian Timber Corporation established under the *South Australian Timber Corporation Act 1979*;

*Forwood* means Forwood Products Pty Ltd (ACN 008 089 727);

*Forwood Subsidiary* means—

- (a) International Panel and Lumber (Australia) Pty Ltd; or
- (b) International Panel and Lumber (New Zealand) Limited; or
- (c) IPL (Marketing) Limited;

*liability* means a present, contingent or future liability or obligation (including a non-pecuniary obligation and a present or future cause of action against the Corporation, Forwood or a Forwood Subsidiary);

*participating bodies corporate* means—

- (a) the Corporation; or
- (b) Forwood; or
- (c) a Forwood Subsidiary;

*transferred asset* means an asset transferred to a purchaser, Forwood or a Forwood Subsidiary under Part 2;

*transferred liability* means a liability transferred to a purchaser, Forwood or a Forwood Subsidiary under Part 2.

### 4—Territorial operation of Act

- (1) This Act applies both within and outside the State.

- (2) This Act applies outside the State to the full extent of the extra-territorial legislative power of the State.

## Part 2—Sale of assets

### 5—Sale of assets and liabilities

- (1) While the Corporation continues to have a controlling interest in Forwood, the Treasurer may by agreement (a *sale agreement*) with another (the *purchaser*) transfer to the purchaser assets and liabilities of the Corporation, Forwood or the Forwood Subsidiaries.
- There may be two or more agreements relating to different assets and liabilities with the same purchaser or with different purchasers.
- (2) A sale agreement under subsection (1) may incidentally provide for the transfer of assets and liabilities between participating bodies corporate (even though they are not parties to the agreement).
- (3) A sale agreement vests the relevant assets and liabilities in accordance with its terms.
- (4) On the vesting of an asset under a sale agreement, the asset is discharged from the trust in favour of the Crown.
- (5) If a sale agreement so provides, a charge to which a transferred asset is subject ceases to apply to the asset on its transfer under the sale agreement.
- (6) The transfer of an asset or liability under this section operates by force of this Act and despite the provisions of any other law or instrument.
- (7) The transfer to a purchaser of a liability under this section operates to discharge the Corporation, Forwood and the Forwood Subsidiaries from the liability.
- (8) The transfer of a liability to Forwood or a Forwood Subsidiary under this section operates to discharge the Corporation from the liability.
- (9) The Treasurer—
- (a) may apply the net proceeds of a sale under this section in discharging or recouping outstanding liabilities of the Corporation, Forwood and the Forwood Subsidiaries; and
  - (b) must pay the balance to the *Asset Management Task Force Operating Account* at the Treasury to be used for the purpose of retiring State debt.

### 6—Transferred instruments

- (1) A sale agreement may provide that instruments identified in the agreement, or to be identified as provided by the agreement, are to be transferred instruments.
- (2) If an instrument is identified in, or under, a sale agreement as a transferred instrument, the instrument operates, as from a date specified in the sale agreement, subject to any modifications specified in the sale agreement.

## 7—Legal proceedings

Subject to any contrary provision in a sale agreement, legal proceedings that had been commenced before the vesting of assets and liabilities under a sale agreement may be continued and completed by or against the Corporation, Forwood or Forwood Subsidiaries.

## 8—Registering authorities to note transfer

The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application by the Treasurer or a person nominated by the Treasurer for the purpose, register or record the transfer of an asset or liability under this Act.

## 9—Stamp duty and financial institutions duty

- (1) No stamp duty is payable under a law of the State in respect of the transfer of assets or liabilities of the Corporation to Forwood or a Forwood Subsidiary under this Act.
- (2) No financial institutions duty is payable under a law of the State in respect of money received in respect of the transfer of assets or liabilities of the Corporation to Forwood or a Forwood Subsidiary under this Act.
- (3) No person has an obligation under the *Stamp Duties Act 1923* to lodge a statement or return relating to the transfer of assets and liabilities of the Corporation to Forwood or a Forwood Subsidiary or to include information about the transfer in a statement or return.

## 10—Evidence

- (1) The Treasurer or a person authorised by the Treasurer to give certificates under this section may issue a certificate certifying that—
  - (a) a specified asset or liability has, or has not, been transferred to a specified purchaser under this Part; or
  - (b) a specified asset or liability has, or has not, been transferred to Forwood or a specified Forwood Subsidiary under this Part; or
  - (c) a specified instrument is, or is not, a transferred instrument under a particular sale agreement and, if it is a transferred instrument, is to be read subject to specified modifications.
- (2) An apparently genuine document that appears to be a certificate under this section must be accepted by courts, arbitrators, persons acting judicially, and administrative officials as evidence of the matters certified.

## 11—Saving provision

Nothing done or allowed in accordance with this Part or a sale agreement—

- (a) constitutes a breach of, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a pre-existing contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence that arises by contract, in equity, by custom or in any other way; or

- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation or fulfils a condition that allows a person to terminate an agreement or obligation; or
- (f) requires any third party consent or approval under a contract, agreement or security; or
- (g) gives rise to any other right or remedy.

## **Part 3—Preparation for sale of assets**

### **12—Preparation for disposal of assets and liabilities**

- (1) The following actions (collectively referred to as the *authorised project*) are authorised:
  - (a) the examination of the undertaking of each of the Corporation, Forwood and the Forwood Subsidiaries with a view to the disposal of their respective assets and liabilities;
  - (b) the preparation of assets and liabilities of each of the Corporation, Forwood and the Forwood Subsidiaries for disposal or any other necessary or appropriate action in anticipation of disposal of those assets and liabilities;
  - (c) other action that the Treasurer authorises, after consultation with the Corporation, Forwood and the Forwood Subsidiaries, in preparation for, or anticipation of, disposal of their respective assets and liabilities.
- (2) The authorised project is to be carried out by—
  - (a) persons employed by the Crown and assigned to work on the project; and
  - (b) officers of the Corporation and Forwood assigned to work on the project; and
  - (c) other persons whose services are engaged by the Crown or the Corporation and Forwood for the purpose of carrying out the project; and
  - (d) other persons approved by the Treasurer whose participation or assistance is, in the opinion of the Treasurer, reasonably required for the purposes of the project.
- (3) The Treasurer (or the Treasurer's delegate) may, despite any other law, authorise purchasers or prospective purchasers and their agents to have access to information in the possession or control of the Corporation, Forwood or a Forwood Subsidiary that should, in the Treasurer's opinion (or the delegate's opinion), be made available to the purchasers or prospective purchasers for the purposes of the authorised project.
- (4) The members, directors and staff of the Corporation, Forwood or a Forwood Subsidiary must, despite any other law, instrument, contract or undertaking—
  - (a) allow persons engaged on the authorised project access to information in the possession or control of the Corporation, Forwood or the Forwood Subsidiary (as applicable) that is reasonably required for, or in connection with, the carrying out of the authorised project; and
  - (b) do whatever is necessary to facilitate the provision of the information to persons entitled to access to the information under subsection (3); and

- (c) provide other co-operation, assistance and facilities that may be reasonably required for, or in connection with, the carrying out of the authorised project.
- (5) A person who is in a position to grant or refuse access to information to which this section relates may deny access to a person who seeks access to the information unless the person produces a certificate issued by the Treasurer (or the Treasurer's delegate) certifying that the person is entitled to access to information under this section and the basis of the entitlement.

### 13—Protection for disclosure and use of information etc

- (1) In this section—

*authorised action* means—

- (a) the disclosure or use of information in the possession or control of—
    - (i) the Corporation, Forwood or a Forwood Subsidiary; or
    - (ii) a current or former member or director of the Corporation, Forwood or a Forwood Subsidiary or staff of the Corporation or Forwood; or
    - (iii) persons involved in the authorised project,as reasonably required for, or in connection with, the carrying out of the authorised project; or
  - (b) anything done or allowed under this Act.
- (2) No authorised action—
    - (a) constitutes a breach of, or default under, an Act or other law; or
    - (b) constitutes a breach of, or default under a contract, agreement, understanding or undertaking; or
    - (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity, by custom, or in any other way); or
    - (d) constitutes a civil or criminal wrong; or
    - (e) terminates an agreement or obligation, or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
    - (f) releases a surety or other obligee wholly or in part from an obligation.

### 14—Evidence

- (1) In legal proceedings, a certificate of the Treasurer (or the Treasurer's delegate) certifying that action described in the certificate forms part of the authorised project, or that a person named in the certificate was at a particular time engaged on the authorised project, must be accepted as proof of the matter so certified in the absence of proof to the contrary.
- (2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted as such in the absence of proof to the contrary.

## Part 4—Miscellaneous

### 15—Act to apply despite *Real Property Act 1886*

This Act applies despite the provisions of the *Real Property Act 1886* or any other law.

### 16—Interaction between this Act and other Acts

- (1) A transaction under this Act is not subject to the *Land and Business (Sale and Conveyancing) Act 1994*.
- (2) No consent, approval or authorisation is required under Part 4 of the *Development Act 1993* for a transaction under this Act.

## Schedule 1—Staff and superannuation

### 1—Interpretation

In this Schedule—

***complying superannuation fund*** means a complying superannuation fund within the meaning of Part IX of the *Income Tax Assessment Act 1936* of the Commonwealth, as amended from time to time, other than the Fund under the *Superannuation Act 1988*;

***employee*** includes officer;

***new scheme contributor*** has the meaning given by the *Superannuation Act 1988*;

***nominated employer***, in relation to a transferring employee, means a person nominated by or under a sale agreement made under this Act as the nominated employer of the transferring employee;

***old scheme contributor*** has the meaning given by the *Superannuation Act 1988*;

***on-going employment***, in relation to a transferring employee, means the employment by a nominated employer of the transferring employee after the transfer date;

***State Scheme*** means the Scheme within the meaning of the *Superannuation Act 1988*;

***State Scheme contributor*** means a contributor within the meaning of the *Superannuation Act 1988*;

***Superannuation Board*** means the South Australian Superannuation Board constituted under the *Superannuation Act 1988*;

***transfer date***, in relation to a transferring employee, means the date nominated by or under a sale agreement made under this Act as the transfer date in relation to the transferring employee;

***transferring employee*** means an employee nominated as a transferring employee by or under a sale agreement made under this Act.

## 2—Superannuation—State Scheme contributors who have reached the age of 55 years

- (1) A State Scheme contributor who is a transferring employee and who has reached the age of 55 years as at the transfer date is taken for the purposes of the *Superannuation Act 1988*—
  - (a) to have continued in the employment of Forwood until his or her on-going employment is terminated for any reason; and
  - (b) to have elected to make and to have made no contribution to the State Scheme after the transfer date.
- (2) A State Scheme contributor who is a transferring employee and who has reached the age of 55 years as at the transfer date, is, on termination of his or her on-going employment for any reason other than death—
  - (a) taken for the purposes of the *Superannuation Act 1988* (but for no other purpose) to have retired from Forwood on the date of that termination; and
  - (b) entitled to a benefit under either section 34 or 27 (as may be appropriate) of the *Superannuation Act 1988* (as modified under subclause (6)); and
  - (c) in the case of a new scheme contributor—entitled to a further benefit under section 32A of the *Superannuation Act 1988*.
- (3) Where an old scheme contributor who is a transferring employee and who has reached the age of 55 years as at the transfer date dies on or after the transfer date, a benefit must be paid in accordance with section 38 of the *Superannuation Act 1988* (as modified under subclause (6)).
- (4) Where a new scheme contributor who is a transferring employee and who has reached the age of 55 years as at the transfer date dies on or after the transfer date while in on-going employment, a benefit must be paid in accordance with section 32 of the *Superannuation Act 1988* (as modified by subclause (6)).
- (5) Where a new scheme contributor who is a transferring employee and who has reached the age of 55 years as at the transfer date dies on or after the transfer date while in on-going employment, a further benefit must be paid pursuant to section 32A of the *Superannuation Act 1988*.
- (6) For the purposes of subclauses (2), (3) and (4)—
  - (a) the item *FS* wherever appearing in sections 32(3) and 34 of the *Superannuation Act 1988* has the following meaning:

*FS* is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before the transfer date adjusted to reflect changes in the Consumer Price Index from the transfer date to the date of termination of the contributor's on-going employment; and
  - (b) the item *FS* wherever appearing in sections 27, 32(2), 32(3a), 32(5) and 38 of the *Superannuation Act 1988* has the following meaning:

*FS* is the contributor's actual or attributed salary (expressed as an annual amount) immediately before the transfer date adjusted to reflect changes in the Consumer Price Index from the transfer date to the date of termination of the contributor's on-going employment; and

- (c) section 32(3a)(a)(I)(B) of the *Superannuation Act 1988* applies as if amended to read as follows:
    - (B) an amount equivalent to twice the amount of the contributor's actual or attributed salary (expressed as an annual amount) immediately before the transfer date adjusted to reflect changes in the Consumer Price Index from the transfer date to the date of termination of the contributor's on-going employment; and
  - (d) section 34(5) of the *Superannuation Act 1988* applies as if amended to read as follows:
    - (5) The amount of a retirement pension will be the amount calculated under this section or 75% of the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before the transfer date adjusted to reflect changes in the Consumer Price Index from the transfer date to the date of termination of the contributor's on-going employment (whichever is the lesser).; and
  - (e) the expressions *transfer date* and *on-going employment* in the above provisions have the same meanings as in this Schedule.
- (7) Despite the above provisions of this section, within one month after the transfer date, a State Scheme contributor who has reached the age of 55 years as at the transfer date may elect, by notice in writing to the Superannuation Board—
- (a) in the case of an old scheme contributor—to receive a benefit under section 39A of the *Superannuation Act 1988*; and
  - (b) in the case of a new scheme contributor—to receive a benefit under section 27 of that Act.
- (8) If a State Scheme contributor makes an election under subclause (7)—
- (a) the contributor becomes entitled to a benefit under the relevant provision of the *Superannuation Act 1988* in accordance with the election (and subclauses (1) to (6) of this clause do not apply to the contributor); and
  - (b) on receipt of the relevant benefit, the contributor ceases to be a State Scheme contributor.

### **3—State Scheme contributors who have not reached the age of 55 years**

- (1) Within one month after the transfer date, a transferring employee who has not reached the age of 55 years as at the transfer date and who is an old scheme contributor may elect by notice in writing to the Superannuation Board, either—
  - (a) to have his or her accrued superannuation benefits preserved under section 39 of the *Superannuation Act 1988*; or

- (b) to receive a benefit under section 39A of that Act.
- (2) If a transferring employee who is an old scheme contributor fails to make an election under subclause (1) within one month after the transfer date, the employee is taken to have made an election under subclause (1)(a).
- (3) Within one month after the transfer date, a transferring employee who has not reached the age of 55 years as at the transfer date and who is a new scheme contributor may elect by notice in writing to Superannuation Board—
- (a) to have his or her accrued superannuation benefits preserved under section 28 of the *Superannuation Act 1988*; or
  - (b) to receive a benefit under section 28A of that Act; or
  - (c) to carry over accrued superannuation benefits to some other complying superannuation fund.
- (4) If a transferring employee who is a new scheme contributor fails to make an election under subclause (3) within one month after the transfer date, the employee is taken to have made an election under subclause (3)(a).
- (5) If a State Scheme contributor makes an election under subclause (1)(a) or (3)(a), the contributor will be taken for the purposes of the *Superannuation Act 1988* to have elected under section 39 or 28 of that Act (whichever may apply to the contributor) to preserve accrued benefits (and the relevant section will apply subject to this Schedule).
- (6) Despite the provisions of section 39 or 28 of the *Superannuation Act 1988* (whichever may apply to the contributor), where accrued benefits are preserved under that section in respect of a transferring employee who is a State Scheme contributor, those benefits do not become payable until the employee—
- (a) ceases to be in on-going employment and reaches the age of 55 years; or
  - (b) dies; or
  - (c) becomes totally and permanently incapacitated for work and ceases to be in on-going employment.
- (7) If a State Scheme contributor makes an election under subclause (1)(b) or (3)(b), the contributor will be taken for the purposes of the *Superannuation Act 1988* to have become entitled to a benefit under section 39A or 28A of that Act (whichever may apply to the contributor).
- (8) If a new scheme contributor makes an election under subclause (3)(c), a payment must be made on behalf of the new scheme contributor to a complying superannuation fund nominated by the contributor and approved by the Superannuation Board of an amount under section 28(5) of the *Superannuation Act 1988*.
- (9) On the making of a payment under subclause (7) or (8), the contributor concerned ceases to be a State Scheme contributor.
- (10) If a new scheme contributor makes an election under subclause (3)(a) or (c), a further benefit must be paid pursuant to section 32A of the *Superannuation Act 1988* (and for the purposes of that section a complying superannuation fund will be regarded as an approved superannuation fund or scheme).

(11) For the purposes of this clause—

- (a) the items *AFS* and *FS* wherever appearing in sections 28(4), 28(5) and 39(3) of the *Superannuation Act 1988* mean the contributor's actual or attributed salary (expressed as an annual amount) immediately before the transfer date adjusted to reflect changes in the Consumer Price Index from the transfer date to the date of termination of the contributor's on-going employment; and
- (b) section 39(6)(b) of the *Superannuation Act 1988* applies as if amended to read as follows:
  - (b) the contributor's actual or attributed salary for the purposes of calculating the pension were that salary immediately before the transfer date adjusted to reflect changes in the Consumer Price Index between the transfer date and the date on which the pension first became payable;; and
- (c) the expressions *transfer date* and *on-going employment* in the above provisions have the same meanings as in this Schedule.

#### **4—Non-application of certain provisions of the *Superannuation Act 1988***

The provisions of Parts 4 and 5 of the *Superannuation Act 1988* apply to transferring employees only to the extent that they are made applicable by this Schedule.

#### **5—Extension of time**

If the Superannuation Board is of opinion that a limitation period referred to in this Schedule would unfairly prejudice a State Scheme contributor, the Board may extend the period as it applies to the contributor.

#### **6—Arrangement under section 5 *Superannuation Act 1988***

The Treasurer may, by order in writing, vary or terminate the arrangement with Forwood in force under section 5 of the *Superannuation Act 1988* immediately before the commencement of this clause.

#### **7—Transfer of Forwood employees**

A transfer of an employee of Forwood to the employment of a nominated employer does not constitute a retrenchment or redundancy.

### **Schedule 2—Transitional provisions**

#### **2—Building and development work regarded as complying**

All building and development work carried out on land of the Corporation by the Crown, the Corporation, Forwood or a Forwood Subsidiary before the commencement of this Act will be regarded as complying with the statutory and regulatory requirements applicable at the time the work was carried out.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *South Australian Timber Corporation (Sale of Assets) Act 1996* amended the following:

*South Australian Timber Corporation Act 1979*

### Principal Act

Year	No	Title	Assent	Commencement
1996	17	<i>South Australian Timber Corporation (Sale of Assets) Act 1996</i>	24.4.1996	30.5.1996 except Sch 2 cl 1—1.7.1996 ( <i>Gazette</i> 30.5.1996 p2635)

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Sch 2		
cl 1	<i>omitted under Legislation Revision and Publication Act 2002</i>	