

House of Assembly—No 114

As laid on the table and read a first time, 18 June 2009

South Australia

**Natural Resources Management (Commercial
Forests) Amendment Bill 2009**

A BILL FOR

An Act to amend the *Natural Resources Management Act 2004*.

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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 *Natural Resources Management (Commercial Forests) Amendment Act 2009*.

2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Natural Resources Management Act 2004*

4—Amendment of section 3—Interpretation

- 15 (1) Section 3(1)—after the definition of *Chief Officer* insert:
- commercial forest* means a forest plantation where the forest vegetation is grown or maintained so that it can be harvested or used for commercial purposes (including through the commercial exploitation of the carbon absorption capacity of the forest vegetation);
- 20 (2) Section 3(1)—after the definition of *CPI* insert:
- declared forestry area* means a declared forestry area under section 169B;
- (3) Section 3(1)—after the definition of *Department* insert:
- designated commercial forest* means a commercial forest within a declared forestry area;
- 25 (4) Section 3(1)—after the definition of *floodplain* insert:
- 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
 - 30 (b) leaves, branches or other parts or products of trees or other forest vegetation;
- forest water licence* means a licence granted by the Minister under Chapter 7 Part 5A;
- (5) Section 3(1), definition of *Schedule 3A entitlement*—after paragraph (b) insert:
- 35 (ba) a forest water licence; or

- (6) Section 3(1), definition of *security interest*—after "water management authorisation" insert:

or a forest water licence

- (7) Section 3(1)—definition of *water allocation*—after paragraph (b) insert:

- (c) in respect of a forest water licence means the water allocation attached to the licence;

5—Amendment of section 76—Preparation of water allocation plans

Section 76—after subsection (8) insert:

- (9) A water allocation plan may, in connection with the management of a prescribed water resource—

(a) set out or identify appropriate principles and methodologies to determine the impact that commercial forests may have on the prescribed water resource and, on the basis of those principles and methodologies, specify hydrological values, as measurements of hydrological impact, that may be assigned to various classes of commercial forest; and

(b) designate commercial forests, or commercial forests of a specified class or classes, within a defined area as commercial forests that, on account of assessments undertaken by the regional NRM board, have been identified as being appropriate to bring within the ambit of Part 5A Division 2 of Chapter 7 on account of their impacts on the prescribed water resource (taking into account the requirements of that Part); and

(c) set out policies or criteria that are to apply for the purposes of determining the extent to which a water allocation under Chapter 7 Part 5A should be varied in various cases (which may include circumstances that lead to an allocation being reduced to zero).

- (10) A water allocation plan may, for the purposes of subsection (9)—

(a) make different provision as to any principles, methodologies or values according to any matter or circumstance specified by the regional NRM board;

(b) specify values (as measurements of hydrological impact) according to any number of trees, volume, area, year or other factor (as determined by the regional NRM board);

(c) exclude specified forests, or forests of a specified class, from a designation under subsection (9)(b) (so as to exclude them from the operation of Chapter 7 Part 5A Division 2).

- (11) A designation under subsection (9)(b) may be made on the basis of an assessment of hydrological impacts that the commercial forests are having, or may be expected to have, on the prescribed water resource.

(12) A summary of the assessments undertaken for the purposes of subsection (9)(b) must be included in the water allocation plan.

(13) For the purposes of subsections (9) and (10), hydrological impacts may be determined according to an assessment by the regional NRM board of 1 or more of the following:

- (a) groundwater recharge reduction;
- (b) surface water run off reduction;
- (c) direct extraction from aquifers;
- (d) any impact prescribed by the regulations.

(14) To avoid doubt, a water allocation plan may make provision under subsection (9) in relation to 1 or more commercial forests despite the fact that the commercial forest or commercial forests have not been the subject of a notice under section 125(5a).

6—Amendment of section 101—Declaration of levies

Section 101(1)—after paragraph (c) insert:

or

- (d) are the holders of forest water licences granted in relation to commercial forests within a specified NRM region.

7—Amendment of section 104—Liability for levy

Section 104—after subsection (10) insert:

- (10a) A person who holds a forest water licence at any time during a financial year in respect of which a levy has been declared is liable to pay to the Minister the full amount of the levy whether he or she holds the licence throughout the year or not.

8—Amendment of section 124—Right to take water subject to certain requirements

Section 124—after subsection (7) insert:

- (7a) This section operates subject to any requirement to have a licence with respect to a commercial forest under Part 5A.

9—Amendment of section 125—Declaration of prescribed water resources

Section 125—after subsection (5) insert:

- (5a) The Minister may, in a notice under subsection (5), include an outline of proposals to introduce controls on the hydrological impacts of commercial forests, or specified classes of commercial forests, on the water resource under Part 5A.

10—Amendment of section 127—Water affecting activities

Section 127(5)—after paragraph (j) insert:

- (ja) undertaking commercial forestry;

11—Amendment of section 152—Allocation of water

Section 152(1)—after paragraph (b) insert:

or

- 5 (c) from the holder of a forest water licence (subject to any conversion or adjustment under the provisions of any relevant water allocation plan).

12—Insertion of Chapter 7 Part 5A

Chapter 7—after Part 5 insert:

Part 5A—Commercial forestry

10 Division 1—Preliminary

169A—Interpretation

In this Part—

15 *forest manager*, in relation to a commercial forest, means the person who has effective control of the forest vegetation that makes up the forest, either as the owner or occupier of the land on which the vegetation is growing or as owner of the forest vegetation under a forest property (vegetation) agreement under the *Forest Property Act 2000*.

169B—Declaration of forestry areas

- 20 (1) The Minister may, by notice in the Gazette, declare an area of the State to be a *declared forestry area* for the purposes of this Act.
- (2) However, the Minister must not declare an area to be a declared forestry area unless—
- 25 (a) the area has been identified in a water allocation plan under section 76(9); and
- (b) the Minister has referred the matter to the Minister primarily responsible for commercial forestry within the State and has considered any advice provided by that Minister; and
- 30 (c) the Minister is satisfied, after taking into account such matters as the Minister thinks fit—
- (i) that commercial forests in the relevant area (including after taking into account expansions that are reasonably likely to occur into the future) are having, or are reasonably likely to have, a significant hydrological impact on a prescribed water resource; and
- 35 (ii) that the declaration is a reasonable measure to improve the management of the prescribed water resource.

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- (3) While a declaration is in force under subsection (1), the forest manager for a commercial forest within the declared forestry area that falls within the relevant designation under the water allocation plan must ensure that the forest is the subject of a forest water licence granted by the Minister under Division 2 (unless the commercial forest is a forest excluded from the operation of Division 2 by the relevant water allocation plan).
- 10
- (4) The Minister may, by subsequent notice in the Gazette—
- (a) vary the declaration of an area under subsection (1);
 - (b) revoke the declaration of an area under subsection (1).
- 15
- (5) If a notice is published under subsection (4), the Minister may, by the same or a subsequent notice published in the Gazette, make provision for any transitional or consequential matter, including for the status or operation of any forest water licence that may apply in relation to the relevant area and the status or hydrological transfer value (if any) of any water allocation attached to any forest water licence after taking into account the provisions of the relevant water allocation plan (and any such notice will have effect according to its terms).
- 20
- (6) For the purposes of this section, the expansion of a commercial forest will be taken to include a situation where there is to be an increase in the land that is to be planted with trees for the purposes of a commercial forest.

Division 2—Licences

169C—Forest water licences

- 25
- (1) A forest water licence will be granted by the Minister.
- (2) An application for a licence must be in a form approved by the Minister and must—
- 30
- (a) specify—
 - (i) the commercial forest in relation to which the licence is being sought; or
 - (ii) if the forest is yet to be established, the land where the forest is to be located, the proposed size of the forest (by area and by number of trees), and the type or types of trees proposed to be planted; and
 - (b) be made by the forest manager, or by some other person authorised by the Minister; and
 - (c) be accompanied by the fee prescribed by the regulations; and
 - (d) be accompanied by such other information or material as the
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- Minister may require.

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- (3) The Minister may refuse to grant a forest water licence—
- (a) to a person, or to the associate of a person, who formerly held a licence that was cancelled under this Act; or
 - (b) to a person who has acted in contravention of this Act; or
 - (c) on any ground prescribed by the regulations; or
 - (d) on any other reasonable ground.
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- (4) The Minister's decision on an application for a licence that relates to a commercial forest within the Murray-Darling Basin must take into account the terms and requirements of the Murray-Darling Basin Agreement, and any relevant resolution of the Ministerial Council under that Agreement (insofar as they may be relevant).
- 15
- (5) If an application for a forest water licence is within a class of applications prescribed by the regulations for the purposes of this provision, the Minister must, before making a decision on the application—
- (a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and
 - (b) comply with the Minister's directions in relation to the application (including that if the application is to be granted then the licence be subject to conditions specified by the Minister).
- 20
- (6) In addition, the Minister's decision on the grant of a forest water licence must be consistent with—
- (a) any relevant provisions of the water allocation plan; and
 - (b) requirements (if any) prescribed by the regulations.
- 25
- (7) A forest water licence applies to the site of the commercial forest to which the licence relates and is attached to—
- (a) subject to paragraph (b)—the land constituting the site;
 - (b) if the forest is the subject of a forest property (vegetation) agreement—the forest vegetation.
- 30
- (8) If land within the ambit of subsection (7)(a) is transferred, the transferee must furnish the Minister with notice of the transfer in accordance with the regulations.
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- (9) If the interest conferred under the *Forest Property Act 2000* by a forest property (vegetation) agreement within the ambit of subsection (7)(b) is assigned to another person, the person to whom the interest is assigned must furnish the Minister with notice of the assignment in accordance with the regulations.

169D—Allocation of water

- 40
- (1) A forest water licence must have a water allocation attached to the licence.

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- (2) The water allocation must provide for a quantity of water that is at least equal to the water required to fully offset the impact of the forest on the relevant water resource, as determined in accordance with the hydrological values that are relevant to the commercial forest under the relevant water allocation plan (as relevant at the time of the issue of the licence and as relevant taking into account any expansion or reduction in the size of the forest) and subject to any allowance under a scheme (if any) relating to the management of the forest (including as to the planting and harvesting of trees constituting the forest) approved by the Minister (on such conditions as the Minister thinks fit) for the purposes of this section.
- (3) The water allocation may be obtained—
- (a) by the holder of the relevant forest water licence, on the basis that a water allocation is being granted by the Minister; or
- (b) by the holder of the relevant forest water licence on the basis of a transfer of a water allocation—
- (i) from the holder of another forest water licence; or
- (ii) from the holder of a water licence,
- (or by a combination of both).
- (4) The Minister may require the payment of a fee for a water allocation granted by the Minister under subsection (3)(a).
- (5) The Minister may, in connection with the operation of subsection (4), determine a fee that is based on—
- (a) the Minister's assessment of the value of the water allocation; or
- (b) a process that determines the value of the water allocation according to a procedure determined by the Minister (including, if the Minister thinks fit, a tender or auction process).
- (6) A water allocation (as attached to a forest water licence) must be consistent with the relevant water allocation plan.
- (7) In this section—
- hydrological values* means the values specified by the water allocation plan under section 76(9)(a) (as measurements of hydrological impact).

169E—Variations—allocations

- 40
- (1) A water allocation attached to a forest water licence may be varied (including so as to provide for a reduction in the water allocation) by the Minister—
- (a) at any time on the application of, or with the consent of, the holder of the licence; or

- (b) at the time, or within the prescribed period following the time, when a part of the forest is harvested; or
- (c) if the Minister is authorised to do so by the regulations.
- (2) An application under subsection (1)(a) must—
- 5 (a) be made in a form approved by the Minister; and
- (b) be accompanied by the fee prescribed by the regulations.
- (3) The Minister's decision on the variation of a water allocation under subsection (1) must be consistent with the relevant water allocation plan.
- 10 (4) A variation under subsection (1) may operate subject to any allowance under a scheme (if any) relating to the management of the forest (including as to the planting and harvesting of trees constituting the forest) approved by the Minister (and subject to complying with any conditions attached to that approval).
- 15 (5) The Minister is not required to conduct a hearing or to give notice to a third party before varying a water allocation under this section.

169F—Transfer of allocations

- (1) Subject to this Act and the relevant water allocation plan, the holder of a forest water licence may transfer the whole or a part of the water allocation attached to the licence—
- 20 (a) to the holder of another forest water licence for a forest in the same declared forestry area; or
- (b) to the holder of another forest water licence for a forest in a different declared forestry area; or
- 25 (c) to the holder of a water licence; or
- (d) to the Minister.
- (2) A reference in subsection (1)(a), (b) or (c) to a forest water licence or a water licence includes a reference to a licence created to receive the relevant transfer.
- 30 (3) A transfer requires the approval of the Minister.
- (4) An application to the Minister for his or her approval must—
- (a) be made in a form approved by the Minister; and
- (b) be accompanied by the fee prescribed by the regulations.
- 35 (5) The Minister must refuse to grant approval for the transfer of a water allocation if the result would be that the water allocation attached to the licence would fall below the water required to offset the impact of the forest on the relevant water resource (as determined under the relevant water allocation plan).
- 40 (6) The Minister may refuse to grant approval for the transfer of a water allocation if the holder of the licence is in breach of a condition of the licence.

(7) In addition, the Minister's decision to grant or refuse approval for the transfer of a water allocation—

(a) must be consistent with the relevant water allocation plan; and

(b) if—

(i) the transfer is to the holder of another forest water licence for a forest in a different declared area— must be consistent with the water allocation plan for the water resource that is relevant to the other forest water licence; or

(ii) the transfer is to the holder of a water licence that relates to a different prescribed water resource— must be consistent with the water allocation plan for that other prescribed water resource; and

(c) must be made in the public interest; and

(d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a transfer must be refused).

(8) Depending on—

(a) the class of the commercial forest under the other licence on a transfer under subsection (1)(a) or (b), taking into account the provisions of the relevant water allocation plan; and

(b) the provisions of any relevant water allocation plan as to how water allocations are to be converted or adjusted if transferred from 1 class of forest to another, or in relation to 1 prescribed water resource to another,

the hydrological value of a water allocation may be reduced or increased (by force of the provisions of a water allocation plan or plans and by force of this subsection) on its transfer.

(9) Without limiting a preceding subsection, if a forest property (vegetation) agreement to which a forest water licence is attached comes to an end, the forest manager may, subject to the regulations, deal with a water allocation attached to the licence in a manner approved by the Minister.

(10) Despite the provisions of the *Stamp Duties Act 1923*, the transfer of a water allocation under this section is not chargeable with duty under that Act.

169G—Conditions

A forest water licence will be subject to such conditions—

(a) prescribed from time to time by the regulations; or

(b) endorsed on the licence itself by the Minister.

169H—Variations—conditions

- (1) A condition to a forest water licence may be varied by the Minister—
- (a) at any time on the application of, or with the consent of, the holder of the licence; or
 - (b) at the time, or within the prescribed period following the time, when a part of the forest is harvested; or
 - (c) at intervals specified by the Minister in the licence; or
 - (d) if the Minister is authorised to do so under the provisions of the relevant water allocation plan; or
 - (e) if the Minister is authorised to do so by the regulations.
- (2) An application under subsection (1)(a) must—
- (a) be made in a form approved by the Minister; and
 - (b) be accompanied by the fee prescribed by the regulations.
- (3) The Minister's decision on the variation of a condition—
- (a) must not be seriously at variance with the relevant water allocation plan; and
 - (b) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for variation must be refused).
- (4) The holder of a licence may appeal to the ERD Court against—
- (a) a decision to refuse to grant an application to vary a condition of his or her licence under subsection (1)(a); or
 - (b) the variation of a condition under subsection (1)(b) or (c).
- (5) The Minister is not required to conduct a hearing or to give notice to a third party before varying a condition under this section.

169I—Establishment of licence on declaration of areas

- (1) On or after a relevant day, the forest manager for a commercial forest within the relevant declared forestry area (as the forest exists on the relevant day) is entitled, on due application under this Act made within a period specified by the relevant water allocation plan, to be issued a forest water licence with respect to that forest that has attached to the licence a water allocation granted by the Minister (without the payment of a purchase price).
- (2) The Minister must, in acting under subsection (1), take into account the provisions of the relevant water allocation plan (as at the date of issue of the licence), and may take into account such other matters as the Minister thinks fit.

(3) In this section—

relevant day, in relation to a commercial forest within a declared forestry area, is the day from which a forest water licence is required under this Part in relation to the commercial forest.

169J—Surrender of licences

A licensee may surrender his or her forest water licence in prescribed circumstances.

169K—Cancellation of licences

The Minister may cancel a forest water licence in circumstances—

- (a) specified in the relevant water allocation plan; or
- (b) prescribed by the regulations.

Division 4—Related matters

169L—Offences

(1) A person who—

- (a) contravenes section 169B(3); or
- (b) contravenes or fails to comply with a condition to which a licence under this Part is subject,

is guilty of an offence.

Maximum penalty:

- (a) if the court by which the conviction is recorded has accepted evidence as to the extent of the deficiency in a water allocation, as assessed according to hydrological values, and considers it appropriate that this paragraph applies—

- (i) a sum calculated at the prescribed rate for each kilolitre of water represented by those hydrological values; or

- (ii) —

- (A) where the offender is a body corporate—\$250 000;

- (B) where the offender is a natural person—\$125 000,

whichever is the greater; or

- (b) in any other case—

- (i) where the offender is a body corporate—\$250 000;
 - (ii) where the offender is a natural person—\$125 000.

- 5 (2) A forest manager who is required to comply with section 169B(3) in relation to a particular commercial forest must ensure that the water allocation attached to the relevant forest water licence is at all times at least equal to the water required to fully offset the hydrological impacts of the forest on the relevant water resource, as determined in accordance with the hydrological values that are relevant to the forest under the relevant water allocation plan and subject to any allowance under a scheme (if any) relating to the management of the forest (including as to the planting and harvesting of trees constituting the forest) approved by the Minister (and subject to complying with any conditions attached to that approval).

Maximum penalty:

- 15 (a) if the court by which the conviction is recorded has accepted evidence as to the extent of the deficiency in a water allocation, as assessed according to hydrological values, and considers it appropriate that this paragraph applies—

(i) a sum calculated at the prescribed rate for each kilolitre of water represented by those hydrological values; or

20 (ii) —

(A) where the offender is a body corporate—
\$250 000;

(B) where the offender is a natural person—
\$125 000,

25 whichever is the greater; or

- (b) in any other case—

(i) where the offender is a body corporate—\$250 000;

(ii) where the offender is a natural person—\$125 000.

169M—Availability of copies of licences

- 30 (1) The Minister must make copies of licences granted by the Minister under this Part available for inspection and purchase by members of the public.
- (2) The Minister must not charge for inspection of a licence and must not charge more than the fee prescribed by the regulations for sale of copies of a licence.
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169N—Law governing decisions under this Part

- (1) If a decision is being made under this Part with respect to—
- (a) an application for a forest water licence; or
- (b) a water allocation (including a variation or transfer of a water allocation); or
- 40 (c) the variation of a condition to a forest water licence,

5 the law to be applied in deciding the matter, and the provisions of any water allocation plan that are relevant to the consideration or determination of the matter (including in any subsequent review or appeal proceedings (whether brought under this Act or not)), is the law in force, and the provisions of the water allocation plan as in force, at the time that the matter falls to be decided, considered or determined (including when that time is the time of any decision on a review or appeal).

10 (2) However, if the Minister does not determine an application for a forest water licence within the prescribed period, the provisions of the relevant water allocation plan that are relevant to the determination of the matter will be the provisions as in force at the end of that prescribed period.

15 (3) Subject to subsection (4), the *prescribed period* is a period prescribed by the regulations.

(4) If the Minister requests an applicant for a forest water licence—
 (a) to provide such additional documents or information; or
 (b) to carry out any form of assessment or test; or
 (c) to take any other action,

20 as the Minister may reasonably require in order to allow the Minister to assess the application, then any period between the date of the request and the date of compliance is not to be included in the calculation of the prescribed period.

25 (5) If the Minister does not decide an application within the prescribed period, the applicant may, after giving 14 days notice in writing to the Minister, apply to the ERD Court for an order requiring the Minister to make a decision on the application within a time fixed by the ERD Court.

30 (6) If the ERD Court makes an order under subsection (5), the ERD Court should also order the Minister to pay the applicant's costs of the proceedings unless the ERD Court is satisfied—

 (a) that the delay is not attributable to an act or omission of the Minister; or

35 (b) that the delay is attributable to a decision of the Minister not to deal with the application within a reasonable time because—

 (i) it appeared to the Minister that there had been a failure to comply with a requirement imposed by or under this Act; or

40 (ii) the Minister believed, on other reasonable grounds, that it was not appropriate to decide the matter in the particular circumstances; or

 (c) that an order for costs should not be made for some other reason.

13—Amendment of section 193—Protection orders

Section 193(1)—after paragraph (b) insert:

- (ba) the requirements of Chapter 7 Part 5A; or

14—Amendment of section 195—Reparation orders

5 Section 195(1)—after paragraph (b) insert:

- (ba) the requirements of Chapter 7 Part 5A; or

15—Amendment of section 197—Reparation authorisations

Section 197(1)—after paragraph (b) insert:

- (ba) the requirements of Chapter 7 Part 5A; or

16—Amendment of section 202—Right of appeal

10 (1) Section 202(1)(b)(ii)—after "water management authorisation" insert:

, a forest water licence

(2) Section 202(1)(b)—after paragraph (iii) insert:

- 15 (iv) an applicant for the transfer of a water allocation attached to a forest water licence may appeal to the Court against a refusal to grant the application;

17—Amendment of section 216—Criminal jurisdiction of Court

Section 216—after paragraph (d) insert:

- (da) section 169L;

18—Amendment of section 226—NRM Register

20 Section 226(1)—after paragraph (a) insert:

- (ab) forest water licences granted under this Act; and

19—Variation of Schedule 3A—The Water Register

25 (1) Schedule 3A, clause 6(e)—after "water licence" insert:

, forest water licence

(2) Schedule 3A, clause 15(1)—after "water licence" insert:

, forest water licence

(3) Schedule 3A, clause 15(2)—after "water licence" insert:

, forest water licence