

Acts Amendment (Carbon Rights and Tree Plantation Agreements) Bill 2002

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Acts Amendment (Carbon Rights and Tree
Plantation Agreements) Bill 2002**

A Bill for

An Act to amend the —

- *Land Administration Act 1997;*
- *Soil and Land Conservation Act 1945;*
- *Stamp Act 1921; and*
- *Transfer of Land Act 1893,*

in relation to matters arising from the enactment of the *Carbon Rights Act 2002* and the *Tree Plantation Agreements Act 2002*.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Acts Amendment (Carbon Rights and Tree Plantation Agreements) Act 2002*.

5 **2. Commencement**

This Act comes into operation on the day on which the *Carbon Rights Act 2002* comes into operation.

Part 2 — Land Administration Act 1997

3. The Act amended

The amendments in this Part are to the *Land Administration Act 1997**.

5 [* Reprinted as at 22 June 2001.
For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 196.]

4. Section 3 amended

10 Section 3(1) is amended by inserting after the definition of
“authorised land officer” the following definition —

“

“**carbon covenant**” and “**carbon right**” have the same
respective meanings as they have in the *Carbon
Rights Act 2002*;

15

”.

5. Section 18A inserted

After section 18 the following section is inserted —

“

20 **18A. Minister’s powers as to carbon rights and carbon
covenants affecting Crown land**

The Minister may —

- 25 (a) apply for the State to be registered as the
proprietor of a carbon right in respect of Crown
land;
- (b) enter into a carbon covenant —
- (i) that benefits a carbon right in respect of
Crown land; or
- (ii) that burdens Crown land;

or

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Bill 2002**

Part 2 Land Administration Act 1997

s. 5

- (c) deal with —
- (i) a carbon right in respect of Crown land;
or
 - (ii) a carbon covenant referred to in
paragraph (b)(i) or (ii).

5

”.

Part 3 — Soil and Land Conservation Act 1945

6. The Act amended

The amendment in this Part is to the *Soil and Land Conservation Act 1945**.

5 [* Reprinted as at 12 August 1997.
For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 346.]

7. Section 4A inserted

After section 4 the following section is inserted in Part I —

10 “

4A. Regulations and soil conservation notices do not apply to prevent commercial harvest of plantation products

(1) In subsection (2) —

15 “**code of practice**” means a code of practice approved by the Commissioner and published in the *Gazette*;

“**commercial purpose**” means the purpose of sale or any other purpose that is directed to financial gain or reward;

20 “**notice**” means a soil conservation notice as defined in section 31;

“**plantation**” means one or more groups of planted trees;

25 “**product**”, in relation to a tree, includes the whole tree, a part of the tree or a thing produced by the tree whether or not the part of the tree or the thing produced by the tree is above or below the ground or has become separated from the tree before being harvested;

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“regulation” means a regulation made under section 22(2) or 48;

“tree” means a perennial plant having one or more woody, self-supporting trunks and includes a tree seedling and a sapling.

5

- (2) A regulation or notice is of no effect to the extent to which it purports to prevent the harvest for a commercial purpose of a product of a tree in a plantation if the harvest is being done, or is intended to be done, in accordance with a code of practice that applies at the time the harvest is being done, or is intended to be done.

10

”.

Part 4 — Stamp Act 1921

8. The Act amended

The amendment in this Part is to the *Stamp Act 1921**.

[* *Reprinted as at 3 August 2001.*

5 *For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 354.]*

9. Third Schedule amended

The Third Schedule is amended by inserting after item 2(18) the following subitems —

10

“

(19) A timber sharefarming agreement under the *Conservation and Land Management Act 1984* or the *Forest Products Act 2000* under which a *profit à prendre* is created but this subitem does not apply to such an agreement if a *profit à prendre* had been previously created in respect of a crop of trees to which the agreement applies.

15

(20) An agreement under the *Tree Plantation Agreements Act 2002* in respect of which a plantation interest, as defined in that Act, is created but this subitem does not apply to such an agreement if a plantation interest had been previously created in respect of a plantation to which the agreement applies.

20

”.

- 5
- 10
- 15
- 20
- 25
- (d) a document for —
- (i) the transfer, mortgage or charge of a carbon right, carbon covenant, plantation interest or *profit à prendre* or for any other dealing in relation to a carbon right, carbon covenant, plantation interest or *profit à prendre*;
 - (ii) the extension of a carbon right, carbon covenant or plantation interest;
 - (iii) the variation of a carbon covenant or tree plantation agreement; or
 - (iv) the surrender of a carbon right, carbon covenant or plantation interest;
- (e) a document lodged with a plan or diagram under Part IVA for the purpose of creating an easement or restrictive covenant under that Part; and
- (f) any other document for a dealing in relation to Crown land.
- ”.
- (4) Section 4(1) is amended after the definition of “Person” by inserting the following definition —
- “
- “Plantation interest”** has the same meaning as it has in the *Tree Plantation Agreements Act 2002*.
- ”.
- (5) Section 4(1) is amended in the definition of “Proprietor” as follows:
- (a) by deleting “or” at the end of paragraph (a);

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(b) by inserting after paragraph (a) —

“

(aa) in relation to a carbon right, carbon covenant
or plantation interest, a person; or

5

”;

(c) by inserting after “that freehold land,” —

“

carbon right, carbon covenant or plantation
interest,

10

”.

(6) Section 4(1) is amended after the definition of “Transmission”
by inserting the following definition —

“

“Tree plantation agreement” means an agreement as
defined in the *Tree Plantation Agreements*
Act 2002.

15

”.

12. Section 65 amended

(1) Section 65(1) is amended by inserting after “lease” in both
places where it occurs —

20

“ , tree plantation agreement ”.

(2) Section 65(3) is amended as follows:

(a) in paragraph (a) by inserting after “lease” —

“ , tree plantation agreement ”;

25

(b) by inserting after “lease,” —

“ tree plantation agreement, ”.

13. Section 91 amended

Section 91 is amended as follows:

(a) by deleting “or charge” and inserting instead —

“

5 , charge, carbon right, carbon covenant or plantation
 interest

”;

(b) by deleting “or annuitant” in both places where it occurs
and inserting instead —

10 “

 , annuitant, or proprietor of a carbon right, carbon
 covenant or plantation interest

”.

14. Part IV Divisions 2A and 2B inserted

15 After section 104 the following Divisions are inserted in
 Part IV —

“

Division 2A — Carbon rights and carbon covenants

104A. Definitions

20 In this Division —

“affected land”, in relation to a carbon right, means
 the land in respect of which the carbon right is
 registered;

25 **“burdened land”**, in relation to a carbon covenant,
 means the land in respect of which the covenant is
 registered as a burden;

30 **“relevant carbon right”**, in relation to a carbon
 covenant or a proposed carbon covenant, means
 the carbon right in relation to which the covenant
 is, or is to be, entered into.

104B. Registration of carbon right form

- (1) A carbon right form shall not be registered unless it is accompanied by —
- 5 (a) the written consent of each person who has a registered interest in the freehold land or Crown land in respect of which the proposed carbon right is to be created; and
- (b) the prescribed fee.
- (2) If a carbon right form is in respect of Crown land, it shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.
- 10

104C. Extension of carbon right

- (1) A carbon right may be extended by an instrument of extension in an approved form that sets out the term of the extension and that is signed by each proprietor of the carbon right.
- 15
- (2) An instrument of extension of a carbon right shall not be registered unless it is accompanied by —
- 20 (a) the written consent of each person who has a registered interest in —
- (i) the affected land; and
- (ii) the carbon right;
- and
- (b) the prescribed fee.
- (3) Subsection (2) does not require the written consent of a person whose signature to an instrument of extension of a carbon right is required under subsection (1).
- 25
- (4) If a carbon right is registered in respect of Crown land, an instrument of extension of the carbon right shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.
- 30

104D. Transfer of carbon right

- 5
- (1) The requirements of subsections (2), (3) and (4) are in addition to the requirements of Part IV Division 1 and any other provision of this Act relevant to the transfer of land or an interest in land.
- (2) A carbon right can only be transferred in relation to the whole of the area of the affected land.
- 10 (3) If the proprietor of a carbon right is also the proprietor of a carbon covenant entered into in relation to that carbon right, a transfer of the carbon right shall not be registered unless it is accompanied by a transfer of the proprietor's interest in the carbon covenant.
- 15 (4) If a carbon right is registered in respect of Crown land, a transfer of the carbon right shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

104E. Mortgage of carbon right

- 20 (1) The requirements of subsection (2) are in addition to the requirements of Part IV Division 3 and any other provision of this Act relevant to the mortgage of land.
- (2) If a carbon right is registered in respect of Crown land, a mortgage of the carbon right shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

25 **104F. Surrender of carbon right**

- (1) A carbon right may be wholly or partially surrendered by an instrument of surrender in an approved form that is signed by each proprietor of the carbon right.

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- 5 (2) An instrument of surrender of a carbon right shall not
 be registered unless —
- (a) the following have been surrendered,
 discharged or withdrawn —
- (i) each registered interest in the carbon
 right or the part of the carbon right to be
 surrendered;
- 10 (ii) any carbon covenant that is registered in
 respect of the carbon right or the part of
 the carbon right to be surrendered;
- (iii) any caveat lodged in respect of the
 carbon right or the part of the carbon
 right to be surrendered;
- and
- 15 (b) the instrument is accompanied by the
 prescribed fee.
- 20 (3) If a carbon right is registered in respect of Crown land,
 an instrument of surrender of the carbon right shall not
 be registered unless there is compliance with section 18
 of the *Land Administration Act 1997*.

104G. Registration of carbon covenant form

- 25 (1) A carbon covenant form shall not be registered unless
 it is accompanied by —
- (a) the written consent of each person who has a
 registered interest in —
- (i) the land to be burdened by the proposed
 carbon covenant; and
- (ii) the relevant carbon right;
- and
- 30 (b) the prescribed fee.

- (2) If a carbon covenant form is in respect of Crown land, it shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

104H. Extension of carbon covenant

- 5 (1) A carbon covenant may be extended by an instrument of extension in an approved form that sets out the term of the extension, which shall not be longer than the term of the relevant carbon right, and that is signed by each proprietor of —
- 10 (a) the carbon covenant; and
(b) the burdened land.
- (2) An instrument of extension of a carbon covenant —
- 15 (a) may be used to vary the provisions of a carbon covenant if the Registrar is satisfied that the covenant if varied as proposed would continue to comply with section 11(2) of the *Carbon Rights Act 2002*; and
- 20 (b) shall not be used to effect a change to —
(i) the proprietors of the carbon covenant or the burdened land; or
(ii) the area of the burdened land to which the covenant applies.
- (3) An instrument of extension of a carbon covenant shall not be registered unless it is accompanied by —
- 25 (a) the written consent of each person who has a registered interest in —
(i) the carbon covenant;
(ii) the burdened land; and
(iii) the relevant carbon right;
- 30 and
(b) the prescribed fee.

s. 14

(4) Subsection (3) does not require the written consent of a person whose signature to an instrument of extension of a carbon covenant is required under subsection (1)(a) or (b).

5 (5) If a carbon covenant applies in respect of Crown land, an instrument of extension of the carbon covenant shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

104I. Variation of carbon covenant

10 (1) The provisions of a carbon covenant may be varied by an instrument of variation in an approved form that sets out the variations and the conditions (if any) on which the variations are made, and that is signed by each proprietor of —

- 15 (a) the carbon covenant; and
 (b) the burdened land.

(2) An instrument of variation of a carbon covenant —

20 (a) may be used to vary the provisions of a carbon covenant if the Registrar is satisfied that the covenant if varied as proposed would continue to comply with section 11(2) of the *Carbon Rights Act 2002*; and

- 25 (b) shall not be used to effect —
 (i) a change to the proprietors of the carbon covenant or the burdened land;
 (ii) a change to the area of the burdened land to which the covenant applies; or
 (iii) an extension or other change to the term of a carbon covenant.

- (3) An instrument of variation of a carbon covenant shall not be registered unless it is accompanied by —
- (a) the written consent of each person who has a registered interest in —
 - 5 (i) the carbon covenant;
 - (ii) the burdened land; and
 - (iii) the relevant carbon right;
 - and
 - (b) the prescribed fee.
- (4) Subsection (3) does not require the written consent of a person whose signature to an instrument of variation of a carbon covenant interest is required under subsection (1)(a) or (b).
- (5) If a carbon covenant applies in respect of Crown land, an instrument of variation of the covenant shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

104J. Transfer of benefits under a carbon covenant

- (1) The requirements of subsections (2), (3) and (4) are in addition to the requirements of Part IV Division 1 and any other provision of this Act relevant to the transfer of land or an interest in land.
- (2) A carbon covenant can only be transferred in relation to the whole of the area of the land in respect of which —
- (a) the relevant carbon right is registered; and
 - (b) the covenant applies.
- (3) A transfer of a carbon covenant shall not be registered unless it is accompanied by a transfer of the proprietor's interest in the relevant carbon right.

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- (4) If a carbon covenant applies in respect of Crown land, a transfer of the carbon covenant shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

5 **104K. Mortgage of carbon covenant**

- (1) The requirements of subsections (2) and (3) are in addition to the requirements of Part IV Division 3 and any other provision of this Act relevant to the mortgage of land.

- 10 (2) A person shall not be a mortgagee of a carbon covenant unless the person is also a mortgagee of the relevant carbon right.

- 15 (3) If a carbon covenant applies in respect of Crown land, a mortgage of the carbon covenant shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

104L. Surrender of carbon covenant

- 20 (1) A carbon covenant may be wholly or partially surrendered by an instrument of surrender in an approved form that is signed by each proprietor of —
 (a) the carbon covenant; and
 (b) the burdened land that is the subject of the surrender.

- 25 (2) An instrument of surrender of a carbon covenant shall not be registered unless —
 (a) the following have been surrendered, discharged or withdrawn —
 (i) each registered interest in the carbon covenant or the part of the carbon covenant to be surrendered;
- 30

- (ii) any caveat lodged in respect of the carbon covenant or the part of the covenant to be surrendered;
- and
- 5 (b) the instrument is accompanied by the prescribed fee.
- (3) If a carbon covenant applies in respect of Crown land, an instrument of surrender of the carbon covenant shall not be registered unless there is compliance with
- 10 section 18 of the *Land Administration Act 1997*.

Division 2B — Tree plantation agreements and plantation interests

104M. Definitions

- 15 In this Division —
- “**agreement**” means a tree plantation agreement;
- “**agreement land**” has the same meaning as it has in the *Tree Plantation Agreements Act 2002*.

104N. Registration of tree plantation agreement

- 20 (1) A party to an agreement may lodge the agreement for registration.
- (2) An agreement shall not be registered unless it is in an approved form and is accompanied —
- 25 (a) by the written consent of each person who has a registered interest in the agreement land;
- (b) if the agreement is entered into by a lessee of freehold land or Crown land, by the written consent of each person who has a registered interest in the freehold land or Crown land that
- 30 is the subject of the lease; and

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(c) by the prescribed fee.

(3) If the agreement is entered into by a lessee of Crown land, the agreement shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

5

1040. Extension of plantation interest

(1) A plantation interest may be extended by an instrument of extension in an approved form that sets out the term of the extension and the conditions (if any) on which the extension is made, and that is signed by each proprietor of —

10

- (a) the plantation interest; and
- (b) the relevant agreement land.

(2) An instrument of extension of a plantation interest —

15

(a) may be used to vary the provisions of the relevant agreement if the Registrar is satisfied that the agreement if varied as proposed would continue to comply with section 6(1) of the *Tree Plantation Agreements Act 2002*; and

20

(b) shall not be used to effect a change to —
(i) the proprietors of the plantation interest or the relevant agreement land; or
(ii) the area of the relevant agreement land to which the plantation interest applies.

25

(3) An instrument of extension of a plantation interest shall not be registered unless it is accompanied by —

- (a) the written consent of —
 - (i) each person who has a registered interest in the relevant agreement land;

(ii) if the relevant agreement was entered into by a lessee of freehold land or Crown land —

5 (I) each person who is a proprietor of the freehold land or Crown land that is the subject of the lease; and

10 (II) each person who has a registered interest in the freehold land or Crown land the subject of the lease that was registered subsequent to the registration of the relevant agreement;

15 and

(iii) each person who has a registered interest in the plantation interest;

and

(b) the prescribed fee.

20 (4) Subsection (3) does not require the written consent of a person whose signature to an instrument of extension of a plantation interest is required under subsection (1)(a) or (b).

25 (5) If an agreement is entered into by a lessee of Crown land, an instrument of extension of the plantation interest that is the subject of the agreement is not to be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

104P. Variation of agreement

30 (1) The provisions of an agreement may be varied by an instrument of variation in an approved form that sets out the variations and the conditions (if any) on which

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the variations are made, and that is signed by each proprietor of —

- 5 (a) the plantation interest that is the subject of the agreement; and
- (b) the agreement land.
- (2) An instrument of variation of an agreement —
- 10 (a) may be used to vary the provisions of the agreement if the Registrar is satisfied that the agreement if varied as proposed would continue to comply with section 6(1) of the *Tree Plantation Agreements Act 2002*; and
- (b) shall not be used to effect —
- 15 (i) a change to the proprietors of a plantation interest or the relevant agreement land;
- (ii) a change to the area of the agreement land to which the plantation interest that is the subject of the agreement applies; or
- 20 (iii) an extension or other change to the term of a plantation interest.
- (3) An instrument of variation of an agreement shall not be registered unless it is accompanied by —
- 25 (a) the written consent of —
- (i) each person who has a registered interest in the agreement land;
- (ii) if the agreement was entered into by a lessee of freehold land or Crown land —
- 30 (I) each person who is a proprietor of the freehold land or Crown

land that is the subject of the lease; and

- 5 (II) each person who has a registered interest in the freehold land or Crown land the subject of the lease that was registered subsequent to the registration of the agreement;

and

- 10 (iii) each person who has a registered interest in the plantation interest that is the subject of the agreement;

and

- (c) the prescribed fee.

- 15 (4) Subsection (3) does not require the written consent of a person whose signature to an instrument of variation of an agreement is required under subsection (1)(a) or (b).

- 20 (5) If an agreement is entered into by a lessee of Crown land, an instrument of variation of the agreement shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

104Q. Transfer of plantation interests

- 25 (1) The requirements of subsections (2) and (3) are in addition to the requirements of Part IV Division 1 and any other provision of this Act relevant to the transfer of land or an interest in land.

- (2) A plantation interest can only be transferred in relation to the whole of the area of the relevant agreement land.

- 30 (3) If a plantation interest is registered in respect of Crown land, a transfer of the plantation interest shall not be

registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

104R. Mortgage of plantation interests

- 5 (1) The requirements of subsection (2) are in addition to the requirements of Part IV Division 3 and any other provision of this Act relevant to the mortgage of land.
- 10 (2) If a plantation interest is registered in respect of Crown land, a mortgage of the plantation interest shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

104S. Surrender of plantation interests

- 15 (1) A plantation interest may be wholly or partially surrendered by an instrument of surrender in an approved form that is signed by each proprietor of —
- (a) the plantation interest; and
- (b) the agreement land.
- (2) An instrument of surrender of a plantation interest shall not be registered unless —
- 20 (a) the following have been surrendered, discharged or withdrawn —
- (i) each registered interest in the plantation interest or the part of the plantation interest to be surrendered;
- 25 (ii) any caveat lodged in respect of the plantation interest or the part of the plantation interest to be surrendered;
- and
- (b) the instrument is accompanied by the prescribed fee.

5 (3) If an agreement is entered into by a lessee of Crown land, an instrument of surrender of the plantation interest that is the subject of the agreement shall not be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

”.

15. Section 110 amended

Section 110 is amended by inserting after “lease” —

“ , carbon right, carbon covenant, plantation interest ”.

10 **16. Section 129A amended**

Section 129A(1) is amended as follows:

(a) by deleting “or charge” and inserting instead —

“

15 , charge, carbon right, carbon covenant or plantation interest

”;

(b) by deleting “or annuitant” and inserting instead —

“

20 , annuitant, or proprietor of the carbon right, carbon covenant or plantation interest

”.

17. Section 137 amended

(1) Section 137 is amended before “Any” by inserting the subsection designation “(1)”.

25 (2) At the end of section 137 the following subsection is inserted —

“

(2) A person claiming an interest in a proposed carbon right, carbon covenant or plantation interest may, before the relevant carbon right form, carbon covenant

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form or tree plantation agreement is registered, lodge a caveat under subsection (1) as if the person were claiming an interest in land.

”.

5 **18. Section 174 amended**

Section 174 is amended by inserting after “of,” —

“ or proprietors of carbon rights or plantation interests in, ”.

19. Section 180 amended

10 Section 180 is amended by deleting “lease mortgage charge or other dealing or any discharge from any mortgage or charge” and inserting instead —

“

15 , lease, mortgage, charge, carbon right, carbon covenant, tree plantation agreement or other dealing or any discharge from any mortgage or charge or any surrender of a carbon right, carbon covenant or plantation interest

”.

20. Section 228 amended

20 Section 228 is amended as follows:

(a) by deleting “mortgage or charge” and inserting instead —

“

25 , mortgage, charge, carbon right, carbon covenant or plantation interest

”;

(b) by deleting “or annuitant” and inserting instead —

“

30 , annuitant, or proprietor of the carbon right, carbon covenant or plantation interest

”.

21. Section 242 amended

Section 242(4) is amended in the definition of “registered disposition” by deleting “or charge” and inserting instead —

“

5

, charge, carbon right, carbon covenant or tree
plantation agreement

”.

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