

Tree Plantation Agreements Bill 2002

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Tree Plantation Agreements Bill 2002

A Bill for

**An Act to provide for the making and effect of certain agreements,
and for the creation and effect of certain interests in land, in relation
to tree plantations, and for related matters.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *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.

3. Definitions

In this Act —

10 **“agreement”** means an agreement that complies with section 6(1);

“agreement land”, in relation to an agreement, means the land (including a leasehold interest) that is described under section 6(1)(e) as the subject of the agreement and, where
15 relevant, identified under section 6(1)(f);

“Crown land” has the same meaning as it has in the *Land Administration Act 1997*;

“owner”, in relation to freehold land, means a person whose name is registered as a proprietor of the freehold land;

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

“plantation interest” means the interest in land referred to in section 7(1)(a);

“product”, in relation to a tree in a plantation, includes the whole tree, a part of the tree or a thing produced by the tree
25 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;

“registered” —

- (a) in relation to land that is under the operation of the *Transfer of Land Act 1893*, means registered under that Act; and
- 5 (b) in relation to land that is subject to the *Registration of Deeds Act 1856*, means registered under that Act;

“Registrar” —

- (a) in relation to land that is under the operation of the *Transfer of Land Act 1893*, means the Registrar of Titles; and
- 10 (b) in relation to land that is subject to the *Registration of Deeds Act 1856*, means the Registrar of Deeds;

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

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4. Application of Act

- (1) This Act does not apply in relation to the management, harvesting or sale of forest products as defined by the *Forest Products Act 2000* on public land as defined by that Act, except to the extent to which section 5 provides.
- 20 (2) Nothing in this Act —
 - (a) is to be read as giving the Forest Products Commission or the Executive Director of the Department of Conservation and Land Management the power to enter into an agreement under this Act; or
 - 25 (b) affects the respective powers that the Forest Products Commission or the Executive Director of the Department of Conservation and Land Management has in relation to a timber sharefarming agreement as defined in the *Forest Products Act 2000* or the *Conservation and Land Management Act 1984*.
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Part 2 — Tree plantation agreements

5. Entering into agreements

- 5 (1) An owner of freehold land, a lessee of freehold land or a lessee of Crown land may enter into an agreement with another person by which that person agrees to do one or more of the following things on the land —
- (a) establish a plantation;
 - (b) maintain a plantation;
 - (c) harvest products from a plantation.
- 10 (2) An agreement may be made in relation to the matters referred to in subsection (1)(b) or (c) even if the plantation does not exist at the time the agreement is made.
- (3) Nothing in subsection (1) affects the operation of section 106 or 109 of the *Land Administration Act 1997*.

6. Contents and formalities of agreements

- 15 (1) An agreement must —
- (a) be in writing;
 - (b) state that it is an agreement under this Act;
 - (c) provide for a thing referred to in section 5(1) to be done;
 - 20 (d) specify —
 - (i) the day on which the agreement commences; and
 - (ii) the term of the agreement;
 - (e) contain the land description for the freehold land, leasehold interest or Crown land that is the subject of the agreement; and
 - 25 (f) identify, if the agreement is to be in respect of part only of the land referred to in paragraph (e), by way of words or a sketch, the part of the land that is the subject of the agreement.

- (2) Subject to subsection (1), an agreement may contain any provisions the parties agree to include.
- 5 (3) An agreement entered into by a lessee of Crown land is of no effect unless section 18 of the *Land Administration Act 1997* has been complied with.
- (4) If a right of exclusive possession is conferred under an agreement, the agreement is not to be treated as a lease.
- 10 (5) An agreement is not a lease or licence to use or occupy land or a subdivision of land to which section 20 of the *Town Planning and Development Act 1928* applies.

Part 3 — Registered tree plantation agreements

7. Interest in land (plantation interest) created on registration of agreement

- (1) When an agreement is registered —
- 5 (a) the property in the trees in a plantation that is the subject of the agreement becomes a separate interest, to be called a “plantation interest”, in the agreement land; and
- (b) the proprietor of a plantation interest under the agreement is each person who is registered as a
- 10 proprietor of that interest.
- (2) Subsection (1)(a) applies even though the trees are affixed to the agreement land.
- (3) A plantation interest is, in relation to the relevant agreement land —
- 15 (a) a hereditament; and
- (b) an encumbrance.

Note: the definition of “land” in the *Transfer of Land Act 1893* includes hereditaments in freehold and Crown land.

8. Dealings in plantation interests

- 20 (1) A plantation interest can be —
- (a) dealt with as a separate interest in the relevant agreement land, except that it cannot be varied;
- (b) the subject of a caveat or process of execution.
- (2) The operation of subsection (1) in relation to land under the
- 25 operation of the *Transfer of Land Act 1893* is subject to —
- (a) Part IV Division 2B of that Act; and
- (b) any provision of that Act that applies by virtue of a plantation interest being —
- (i) a separate interest in land;

- (ii) land within the meaning of that Act;
- (iii) an encumbrance; or
- (iv) otherwise referred to in that Act.

9. Obligations etc. under registered agreements run with the land

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The rights, obligations (including positive covenants) and restrictions that bind the owner or lessee of the agreement land under a registered agreement also burden, attach to, and run with, the agreement land, except to the extent that the agreement provides otherwise.

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10. Plantation interests: other legal effects

- (1) Without limiting section 6(4), a plantation interest does not confer any right of possession.
- (2) A plantation interest is not a lease or licence to use or occupy land or a subdivision of land to which section 20 of the *Town Planning and Development Act 1928* applies.

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11. Registration of surrender of plantation interests: effect

- (1) When a surrender of the whole of a plantation interest is registered, all rights, obligations and restrictions under the relevant agreement cease to have effect, except to the extent that the agreement provides otherwise.
- (2) When a surrender of part of a plantation interest is registered, all rights, obligations and restrictions under the relevant agreement cease to have effect in respect of the surrendered part, except to the extent that the agreement provides otherwise.

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Part 4 — Miscellaneous

12. No contracting out

The provisions of this Act apply despite anything to the contrary in an agreement.

5 **13. Regulations**

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act.

10 (2) Regulations made under this Act may provide that contravention of a regulation or a provision of a regulation constitutes an offence and provide for penalties not exceeding \$5 000.

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