

TREE PLANTATION AGREEMENTS BILL

Clause	Explanation
1.	States the short title of the Bill.
2.	Provides that the proposed Act will come into operation with the <i>Carbon Rights Act</i> .
3.	Contains the definitions of certain terms used in the Bill. These are all straightforward and self-explanatory.
4.	<p>This clause deals with the application of the proposed Act as it relates to public land and the provisions of the <i>Forest Products Act 2000</i> and the <i>Conservation and Land Management Act 1984</i>.</p> <p>Subclause (1) provides that the Act does not apply in relation to “the management, harvesting or sale of forest products as defined in the “<i>Forest Products Act 2000</i> on public land as defined by that Act except to the extent to which section 5 provides”. The proposed section 5 allows a lessee of crown land to enter an agreement. Apart from this, forest products on crown land are within the jurisdiction of the Forest Products Commission and the proposed Act is not intended to affect or interfere with that jurisdiction.</p> <p>Subclause (2) provides that nothing in the proposed Act:</p> <p>(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; or</p> <p>(b) affects the respective powers of the Commission or the Executive Director in relation to timber sharefarming agreements as defined in the <i>Forest Products Commission Act 2000</i> or the <i>Conservation and Land Management Act 1984</i>.</p> <p>It is arguable that even without this subclause, the proposed Act could not be read as referred to in paragraph (a) or affect the powers referred to in paragraph (b), because the powers and functions of the Commission and the Executive Director will not extend beyond those conferred by the Forest Products Act and the CALM Act. The provision makes this clear.</p> <p>The Bill is not intended to affect the arrangements provided for by those Acts in relation to forest products on public land or timber sharefarming agreements under those Acts. It is intended to provide a mechanism that may be used by private land holders and investors in tree plantations.</p>
5.	This clause provides that an owner or lessee of freehold land or a lessee of Crown land may enter into an agreement with another person, by which that person agrees to establish and/or maintain and/or harvest a tree plantation on the land. Subclause (2) makes it clear that the

agreement may be entered into before the trees are planted. Subclause (3) refers to sections 106 and 109 of the *Land Administration Act 1997*. These sections relate to pastoral leases, prohibiting the use of pastoral land for other than pastoral purposes without a permit and restricting the clearing that may take place. The provision allowing a lessee of Crown land to enter a tree plantation agreement (TPA) does not affect these sections, with the result that a pastoral lessee is unlikely to be able to enter into a TPA.

6. There are certain formalities an agreement will need to comply with if it is to be an agreement for the purposes of the Act, including stating that fact. As well as being in writing and providing for the establishment and/or maintenance and/or harvest of a tree plantation, it must:
- Specify the date of commencement and the term;
 - Contain the land description; and
 - If the agreement is in respect of part only of the land, identify that part by words or a sketch.

As long as it contains these things a TPA may contain anything else the parties choose to include.

This clause also states that if a Crown lessee enters a TPA it is of no effect unless section 18 of the *Land Administration Act 1997* has been complied with. (Transactions relating to Crown land to be approved by the Minister for Lands). It also informs readers that a TPA is not a lease even if it does confer a right of exclusive possession (which is usually the hallmark of a lease).

7. This is the crux of the Bill. It states what happens when an agreement is registered. (Amendments to the Transfer of Land Act 1893, contained in the *Acts Amendment (Carbon Rights and Tree Plantation Agreements) Bill 2002* provide for the registration.)

When an agreement is registered, the property in the trees becomes a separate interest in the agreement land. This new interest is to be called a “plantation interest”.

The proprietor of the plantation interest will be whoever is registered as such. The agreement will say who owns (has property in) the trees and they will be registered as the proprietor, making their claim to that ownership secure against the owner of the land and any other interest in it. This law will apply even though the trees are affixed to the land – as they will be, naturally, while they are growing – overriding the common law rule that fixtures to the land are part of the land and therefore belong to the owner of the land.

Subclause (3) states that a plantation interest is, in relation to the agreement land, a hereditament, that is, a real property right capable of being inherited, and an encumbrance – a burden on the land to secure the performance of the agreement.

8. This clause states that a plantation interest can be dealt with as a

separate interest in the agreement land (except that it can't be varied). This means it can be transferred, mortgaged, devised and extended. Also like other interests in land, it can be the subject of a caveat or a process of execution. The ability to deal with a plantation interest as mentioned is subject, however, to any relevant provisions of the *Transfer of Land Act 1893*, and in particular to the new division relating to the registration of and dealings with plantation interests that is to be inserted by the *Acts Amendment (Carbon Rights and Tree Plantation Agreements (Bill) 2002*.

9. This clause states that the rights, obligations and restrictions that bind the owner or lessee of the agreement land also burden, attach to, and run with the agreement land except to the extent that the agreement provides otherwise. This means that subsequent owners or lessees of the land are also bound by the terms of the agreement, including positive covenants, that is, obligations to do something, as opposed to allowing something to be done.
10. A plantation interest does not (itself) confer any right of possession. The agreement may do, however, but even if it confers exclusive possession, it will not be a lease (see 6(4)).

Subclause (2) provides that a plantation interest is not a lease or licence to use land or a subdivision of land to which section 20 of the *Town Planning and Development*

That section requires the approval of the Planning Commission for a lease or licence to use land for more than 10 years unless the land is dealt with as a lot, and for a subdivision. A plantation interest may be created in respect of only part of the land comprised in a certificate of title, that is, of part of a lot. This subclause removes any possibility for argument that a plantation interest is a licence to occupy or subdivision, and that therefore Planning Commission approval of it is required.
11. The rights, obligations and restrictions under an agreement cease to have effect when a plantation interest is surrendered, unless the agreement provides otherwise. The same applies to the surrender of part of a plantation interest.
12. The effect of this clause is that the parties to an agreement may not avoid the legal effects of the proposed Act by attempting to “contract out” of those effects in the agreement. If the parties do not want these effects to apply to their arrangements, they should use some means other than the plantation agreements provided for by this Bill.
13. This clause confers a general regulation –making power. |