

# Forest Products Amendment Bill 2020

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Western Australia

LEGISLATIVE COUNCIL

*(Introduced by Hon Ms Diane Evers, MLC)*

**Forest Products Amendment Bill 2020**

**A Bill for**

**An Act to amend the *Forest Products Act 2000*, to consequentially amend certain other Acts and for related purposes.**

The Parliament of Western Australia enacts as follows:

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**Part 1 — Preliminary**

**1. Short title**

This is the *Forest Products Amendment Act 2020*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1, 2 and 3 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day or days fixed by proclamation.

**3. Definitions**

(1) For the purposes of this Act —

***amended Act*** means the *Forest Products Act 2000* as amended by this Act.

***CALM Act*** means the *Conservation and Land Management Act 1984*;

***CEO Department*** means the Department of Biodiversity, Conservation and Attractions;

***Forest Products Commission*** means the Commission established by section 5 of the original Act;

***original Act*** means the *Forest Products Act 2000* as in force at 1 January 2019.

1       **Part 2 — Amendment of Forest Products Act 2000**

2       **4. Act amended**

3               This Part amends the *Forest Products Act 2000*.

4       **5. Definitions amended**

5       (1) The amendments in this section are to section 3.

6       (2) The definition of “Account” is amended by deleting “Forest  
7       Products Account referred to in section 42” and instead  
8       inserting “Forest Research and Development Account referred  
9       to in section 13”.

10       (3) After the definition of “CALM Act sharefarming agreement”,  
11       the following definition is inserted —

12  
13                       **CEO** means the CEO of the Department of  
14                       Biodiversity, Conservation and Attractions, being the  
15                       department of the Public Service principally assisting  
16                       in the administration of this Act;  
17

18       (4) The definition of “Commission” is deleted.

19       (5) The definition of “Commission sharefarming agreement” is  
20       amended by adding the words “of the original Act” after the  
21       words “Part 7”.

22       (6) The definition of “commissioner” is deleted.

23       (7) After the definition of “forest products”, the following  
24       definition is inserted —

25  
26                       **Forest Products Commission** means the Commission  
27                       established by section 5 of the original Act;  
28

29       (8) The definition of “General Manager” is deleted.

**s. 6**

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- 1 (9) The definition of “manage” is amended by:  
2 (a) adding the words “State forest and” before the words  
3 “forest products”;  
4 (b) deleting “grow, tend (including thinning) and protect”  
5 and instead inserting “restore, tend and protect”.
- 6 (10) After the definition of “manage”, the following definitions are  
7 inserted —  
8  
9 *management contract* has the meaning given by  
10 section 16;  
11 *native vegetation* has the meaning given by section 3  
12 of the *Environmental Protection Act 1986*;  
13 *original Act* means the *Forest Products Act 2000* as in  
14 force on 1 January 2019;  
15
- 16 (11) The definition of “production contract” is amended by deleting  
17 “section 55” and instead inserting “section 16”.
- 18 (12) The definition of “relevant management plan” is amended by  
19 deleting “section 55” and instead inserting “section 16”.
- 20 (13) The definition of “staff member” is amended by deleting  
21 “Commission’s staff other than the General Manager (including  
22 an officer or employee referred to in section 40(1))” and instead  
23 inserting “staff appointed under Part 3”.
- 24 (14) The definition of “the commissioners” is deleted.
- 25 **6. Section 4 amended**
- 26 (1) Section 4 is amended by:  
27 (a) deleting the word “firewood” and inserting the words  
28 “any other products or services prescribed for the  
29 purposes of this definition,”; and



- 1           **6.       CEO functions**
- 2           (1) It is a function of the CEO —
- 3               (a) to advise the Minister on matters relating to
- 4               State forest and timber reserves;
- 5               (b) to promote the expansion, regeneration,
- 6               restoration and protection of State forest;
- 7               (c) to comply with and promote the principles of
- 8               ecologically sustainable forest management,
- 9               and to enter into contracts and undertake any
- 10              project or operation for that purpose; and
- 11              (d) to carry out or cause to be carried out such
- 12              study or research of or into a matter relating to
- 13              a function of the CEO as the Minister may
- 14              approve.
- 15           (2) The CEO has power to do all things necessary or
- 16           convenient to be done for or in connection with the
- 17           performance of its functions under this Act.
- 18           (3) This Act does not limit or otherwise affect the
- 19           operation of the *Biodiversity Conservation Act 2016* or
- 20           the *Environmental Protection Act 1986* in relation to
- 21           the CEO or any other person.
- 22           **7.       Principles on which CEO is to act**
- 23           (1) The CEO in performing its functions must ensure that
- 24           the principles of ecologically sustainable forest
- 25           management are complied with.
- 26           (2) For the purposes of subsection (1) the principles of
- 27           ecologically sustainable forest management are —
- 28               (a) that the decision-making process should
- 29               effectively integrate both long-term and
- 30               short-term environmental, economic, social and
- 31               equitable considerations;

- 1                   (b) that if there are threats of serious or irreversible  
2                   environmental damage, the lack of full  
3                   scientific certainty should not be used as a  
4                   reason for postponing measures to prevent  
5                   environmental degradation;
- 6                   (c) that the present generation should ensure that  
7                   the health, diversity and productivity of the  
8                   environment is maintained or enhanced for the  
9                   benefit of future generations;
- 10                  (d) that the conservation of biological diversity and  
11                  ecological integrity should be a fundamental  
12                  consideration in decision-making; and
- 13                  (e) that environmental factors must be included in  
14                  the valuation of assets and services.

15                  **8. Regard to principles**

16                   A person or body exercising a function or power under  
17                   this Act must comply with the principles of  
18                   ecologically sustainable forest management in  
19                   exercising that function or power.

20                  **9. Delegation by Minister**

- 21                  (1) The Minister may, by instrument in writing, delegate to  
22                  a person, either generally or as otherwise provided in  
23                  the instrument, any power or duty under this Act, other  
24                  than this power of delegation.
- 25                  (2) Anything done by a delegate under a delegation under  
26                  this section has the same force and effect as if it had  
27                  been done by the Minister.

28                  **10. Delegation by CEO**

- 29                  (1) The CEO may, by instrument in writing, delegate to a  
30                  person, either generally or as otherwise provided in the  
31                  instrument, any power or duty under this Act, other  
32                  than this power of delegation.

- 1 (2) Anything done by a delegate under a delegation under  
2 this section has the same force and effect as if it had  
3 been done by the CEO.

### **Part 3 — Staff**

#### **11. Officers and other staff, appointment of**

- 4  
5  
6 (1) There are to be appointed under Part 3 of the *Public*  
7 *Sector Management Act 1994* such officers and other  
8 staff as are required for the purposes of the  
9 administration of this Act.
- 10 (2) A person who holds office as a member of the Forest  
11 Products Commission immediately before the  
12 commencement of this Act ceases to hold that office on  
13 that commencement but, subject to the CALM Act as  
14 amended by this Act, is eligible to be appointed under  
15 subsection (1).

#### **12. Other public service staff and facilities**

- 16  
17 (1) The CEO may by arrangement with the relevant  
18 employer make use, either full-time or part-time, of the  
19 services of any officer or employee —  
20 (a) in the Public Service;  
21 (b) in a State agency or instrumentality; or  
22 (c) otherwise in the service of the Crown in right of  
23 the State.
- 24 (2) The CEO may by arrangement with —  
25 (a) a department of the Public Service; or  
26 (b) a State agency or instrumentality,  
27 make use of any facilities of the department, agency or  
28 instrumentality.

- 1           (3) An arrangement under subsection (1) or (2) is to be  
2           made on such terms as are agreed to by the parties.

### **Part 4 — Financial provisions**

#### **13. Forest Research and Development Account**

- 4           (1) The account established by section 42 of the original  
5           Act is continued in existence and renamed the “Forest  
6           Research and Development Account” (the Account).  
7
- 8           (2) The Account is to be administered by the CEO.
- 9           (3) The Account is to be credited with —
- 10                 (a) moneys paid to the CEO or Minister in the  
11                 performance of functions under this Act; and
- 12                 (b) other moneys lawfully received by, made  
13                 available to, or payable to, the Account.
- 14           (4) The Account may be applied by the CEO for all or any  
15           of the following purposes —
- 16                 (a) to promote the expansion, regeneration,  
17                 restoration and protection of State forest,  
18                 including reforestation of previously forested  
19                 land;
- 20                 (b) to carry out or cause to be carried out such  
21                 study or research of or into a matter relating to  
22                 a function of the CEO; and
- 23                 (c) all other expenditure lawfully incurred by the  
24                 CEO in the rehabilitation, restoration and  
25                 reforestation of State forest.

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**Part 5 — Regulation of forestry**

**Division 1 — Prohibited forestry**

**14. Minister may prohibit forestry activity**

- (1) The Minister may, by order published in the *Gazette*, prohibit persons or any specified class of persons from engaging in any forestry activity of a specified class.
  - (2) An order may prohibit a forestry activity at all times or during any specified period.
  - (3) A person must not —
    - (a) contravene a provision of an order; or
    - (b) have in the person’s possession any thing intended to be used to engage in an activity that the person is prohibited from engaging in by an order.
- Penalty: A fine not exceeding \$10 000 or, in the case of a body corporate, a fine not exceeding \$50 000.
- (4) It is a defence in proceedings for an offence against subsection (3)(b) for the person charged to prove that the person did not know, and could not reasonably be expected to have known, that the activity was carried out in contravention of an order.
  - (5) The Minister may, by further order published in the *Gazette*, amend or revoke an order made under this section.

**15. Minister’s orders subject to disallowance by Parliament**

- (1) An order made under this Division is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

- 1           (2) Section 42 of the *Interpretation Act 1984* applies to and  
2           in relation to an order made under this Division as if  
3           the order were a regulation.

4           **Division 2 — Contracts for the management, harvesting**  
5           **or sale of forest products**

6           **16. Definitions**

- 7           (1) In this Division, unless the contrary intention  
8           appears —
- 9                 **management contract** means a contract for the  
10                management of State forest and timber reserves to  
11                which the CEO is a party;
- 12                **production contract** means a contract for the  
13                management, harvesting or sale of forest products to  
14                which the CEO is a party;
- 15                **relevant management plan**, in relation to a production  
16                contract, means the management plan that —
- 17                   (a) relates to departmental land on which forest  
18                   products that are to be managed, harvested or  
19                   sold under the contract are located; and
- 20                   (b) has effect during the term of the contract;
- 21                **road contract** means a contract (other than a  
22                production contract) providing for the construction or  
23                maintenance of roads for the purposes of managing or  
24                harvesting forest products.
- 25           (2) For the avoidance of doubt, native vegetation may only  
26           be sold under this Division —
- 27                (a) under a management contract; and
- 28                (b) where its availability is incidental to or in aid of  
29                the management of the State forest or timber  
30                reserve.

- 1           **17.     Contracts generally**
- 2                     Without limiting section 6, the CEO may make any
- 3                     appropriate commercial arrangements, or do anything
- 4                     else that it considers appropriate, for the purposes of
- 5                     entering into management contracts, production
- 6                     contracts and road contracts, including —
- 7                     (a)   conducting negotiations by private treaty;
- 8                     (b)   calling for expressions of interest;
- 9                     (c)   calling tenders; and
- 10                    (d)   arranging sales by auction.
- 11           **18.     Contracts and related arrangements**
- 12                    (1)   A production contract or management contract with a
- 13                    person for the management or harvesting of forest
- 14                    products may provide for the person’s obligations as
- 15                    to —
- 16                    (a)   the construction or maintenance of roads or
- 17                    other infrastructure for the purposes of
- 18                    managing or harvesting;
- 19                    (b)   silvicultural operations or other preparations
- 20                    before, and silvicultural operations after, the
- 21                    felling or cutting of forest products; and
- 22                    (c)   regeneration of forest after felling or cutting.
- 23                    (2)   If State forest or forest products to be managed or
- 24                    harvested under a production contract are located on
- 25                    departmental land the inclusion of provisions referred
- 26                    to in subsection (1) in the contract does not affect the
- 27                    Department’s functions under the CALM Act and any
- 28                    relevant management plan.

- 1           **19.       Contracts subject to relevant management plan**
- 2           (1) Before entering into a management contract or
- 3           production contract relating to State forest or forest
- 4           products located on departmental land the CEO is to
- 5           ensure that —
- 6                 (a) the quantities and kinds of forest products; and
- 7                 (b) the location of the forest products proposed to
- 8                         be managed, harvested or sold under the
- 9                         contract,
- 10                         are in accordance with the provisions of the relevant
- 11                         management plan.
- 12           (2) A contract referred to in subsection (1) has no effect
- 13           after the relevant management plan has expired.

- 14           **20.       Contracts subject to this Act and the CALM Act**
- 15           A provision in, or condition of, a management contract,
- 16           production contract or road contract that is inconsistent
- 17           with —
- 18                 (a) this Act; or
- 19                 (b) in the case of a contract relating to forest
- 20                         products located on departmental land —
- 21                                 (i) the CALM Act; or
- 22                                 (ii) the relevant management plan,
- 23                         is of no effect, but without prejudice to other
- 24                         provisions or conditions of the contract.
- 25

- 26           **9.       Part 9 amended**
- 27           (1) Section 62 is amended by deleting “General Manager” and
- 28           inserting instead “CEO”.
- 29           (2) Section 65(2) is amended by deleting “Commission” and
- 30           inserting instead “CEO”.

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- 1    **10.    Part 10 amended**
- 2       (1) Section 66(2) is amended by deleting “Commission” and  
3       inserting instead “CEO”.
- 4       (2) Section 66(3) is amended by deleting “Commission” and  
5       inserting instead “CEO”.
- 6       (3) Section 66(5) is amended by deleting “Commission” and  
7       inserting instead “CEO”.
- 8       (4) Section 66(6)(a) is amended by deleting “Commission” and  
9       inserting instead “CEO”.
- 10      (5) Section 66(6)(b) is amended by deleting “Commission” and  
11      inserting instead “CEO”.
- 12      (6) Section 67(1) is amended by deleting “Commission” and  
13      inserting instead “CEO”.
- 14      (7) Section 67(3) is amended by deleting “Commission” and  
15      inserting instead “CEO”.
- 16      (8) Section 68 is repealed.
- 17      (9) Section 69(1)(a) is repealed.
- 18      (10) Section 70(2) is repealed.
- 19      (11) Section 71(2)(a) is amended by deleting “Commission” and  
20      inserting instead “CEO”.
- 21      (12) Section 71(2)(b) is amended by deleting “Commission” and  
22      inserting instead “CEO”.

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**Part 3 — Amendment of Conservation and Land  
Management Act 1984**

**11. CALM Act amended**

This Part amends the *Conservation and Land Management Act 1984*.

**12. Definitions amended**

(1) This section amends section 3 of the CALM Act.

(2) The definition of “Forest Products Commission” is deleted.

(3) After the definition of “forest products”, the following definition is inserted —

*Forest CEO* means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Forest Products Act 2000*;

**13. Other sections amended**

(1) Section 19(1)(g) is amended by deleting the words “Forest Products Commission” and instead inserting “Forest CEO”.

(2) Section 19(8) is amended by deleting the words “Forest Products Commission” and instead inserting “Forest CEO”.

(3) Section 22(b) is amended by deleting the words “as a commissioner, the General Manager or a member of the staff of the Forest Products Commission” and instead inserting “under the Forest Products Act 2000”.

(4) Section 33(1)(bb) is amended by deleting the words “Forest Products Commission” and instead inserting “Forest CEO”.

(5) Section 35(2) is amended by deleting the words “Forest Products Commission” and instead inserting “Forest CEO”.

(6) Section 54(3)(a)(ii) is amended by deleting the words “Forest Products Commission” and instead inserting “Forest CEO”.

**Forest Products Amendment Bill 2020**

**Part 3** Amendment of Conservation and Land Management Act  
1984

**s. 13**

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- 1 (7) Section 58(2) is amended by deleting the words “Forest  
2 Products Commission” and instead inserting “Forest CEO”.
- 3 (8) Section 64(b)(i) is amended by deleting the words  
4 “section 42(2)” and instead inserting “section 12(4)”.
- 5 (9) Section 118(1)(a) is amended by deleting the words “section 65  
6 of”.

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## Part 4 — Transitional and saving

### 14. Transitional regulations

(1) In this section —

*transitional matter* means a matter that needs to be dealt with for the purpose of effecting the transition from the original Act, as enacted immediately before the commencement of this Act, to —

- (a) the CALM Act as amended by this Act; or
- (b) the Forest Products Act as amended by this Act.

(2) If there is no sufficient provision in this Act for dealing with a transitional matter, the Governor may make regulations prescribing all matters that are required, or are necessary or convenient, for dealing with that transitional matter.

(3) Regulations made under subsection (2) may have effect before the day on which they are published in the Gazette.

### 15. Devolution of the Forest Products Commission's assets, rights and liabilities

(1) On the commencement day —

- (a) the assets and rights of the Forest Products Commission immediately before that day become assets and rights of the CEO by force of this section; and
- (b) the liabilities of the Forest Products Commission immediately before that day become liabilities of the CEO, by force of this section.

(2) On and after the commencement day, any proceedings that immediately before that day might have been brought or continued by the Forest Products Commission may be brought or continued by the CEO.

**s. 16**

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1 (3) On and after the commencement day, any remedy that  
2 immediately before that day is available against or to the Forest  
3 Products Commission is available against or to the CEO.

4 **16. Certain contracts under Forest Products Act have effect as**  
5 **if entered into by the CEO**

6 A contract entered into under the original Act that is in effect  
7 immediately before the commencement of this Act has effect as  
8 if it had been entered into by the CEO instead of the Forest  
9 Products Commission.

10 **17. Continuing effect and transfer of rights and obligations**

11 (1) Anything commenced to be done by the Forest Products  
12 Commission before the commencement of this Part may be  
13 continued on and after the commencement of this Part by the  
14 CEO.

15 (2) An act done or omitted to be done before the commencement of  
16 this Part by, to or in respect of the Forest Products Commission,  
17 to the extent that the act or omission —

18 (a) has force or significance; and

19 (b) is not governed by another provision of this Part,

20 is on and after the commencement of this Part taken to have  
21 been done or omitted to be done by, to or in respect of the CEO.

22 (3) Any agreement or instrument that contains a reference to the  
23 Forest Products Commission has effect as if the reference were  
24 to the CEO unless the context otherwise requires.

25 **18. Transfer of rights and obligations under other agreements**

26 (1) Subject to sections 16 and 17, an agreement that is in effect  
27 immediately before the commencement of this Part that  
28 provides for any rights, obligations or powers to be held by, or  
29 to be imposed or conferred on, the Forest Products Commission  
30 under the agreement as to the harvesting, sale or supply of  
31 timber or other forest produce has effect as if the rights,

1 obligations or powers were held by, or imposed or conferred on,  
2 the CEO.

3 (2) An agreement referred to in subsection (1) entered into by the  
4 Forest Products Commission as agent of another person has  
5 effect as if the agreement were entered into by the CEO as agent  
6 of that person.

7 **19. Certain contracts to be concluded**

8 To the extent that an agreement or contract entered into by the  
9 Forest Products Commission relates to matters outside the  
10 CEO's functions under the amended Act, the CEO is to ensure  
11 that the agreement or contract is transferred, terminated,  
12 rescinded, varied or concluded as soon as reasonably  
13 practicable.

14 **20. Transfer of positions**

15 (1) The Minister, by order published in the *Gazette* within 4 weeks  
16 of the commencement of this Act, is to determine the positions,  
17 the functions or duties of which related, immediately before the  
18 commencement of this Act, to performing duties relating  
19 exclusively or primarily to the administration of the amended  
20 Act.

21 (2) The Minister, by order published in the *Gazette* within 4 weeks  
22 of the commencement of this Act, may determine the positions  
23 (other than the positions determined under subsection (1)) —

24 (a) the functions or duties of which related, immediately  
25 before the commencement of this Act, to the provision  
26 of administrative, policy or corporate services for the  
27 purposes of the performance of the duties referred to in  
28 subsection (1); and

29 (b) that the Minister considers appropriate for transfer to the  
30 Department, or other Department of the public service,  
31 by reason of this Act.

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- 1 (3) On the publication of an order under subsections (1) or (2) a  
2 position referred to in the order is transferred to the Department.
- 3 (4) A person holding a position when it is transferred to the  
4 Department is to be regarded as having been engaged under  
5 Part 3 of the amended Act.
- 6 (5) Except as otherwise agreed by a person referred to in  
7 subsection (4), the remuneration, existing or accrued rights  
8 (including the right to be employed for an indefinite period in  
9 the Public Service), rights under a superannuation scheme or  
10 terms, conditions or continuity of service of the person are not  
11 affected, prejudiced or interrupted by the operation of  
12 subsections (3) and (4).
- 13 (6) If a person referred to in subsection (4) was a contributor as  
14 defined in the *Superannuation and Family Benefits Act 1938*  
15 immediately before becoming a Department employee, the  
16 person may continue to be a contributor under that Act after  
17 becoming a Department employee.
- 18 (7) For the purposes of subsection (6), the Department —  
19 (a) is a department as defined by the *Superannuation and*  
20 *Family Benefits Act 1938*; and  
21 (b) is to pay to the Board under that Act payments of the  
22 kind described in paragraph (i) of the proviso to the  
23 definition of “department” in section 6 of that Act.
- 24 (8) In this section —  
25 ***Department employee*** means a member of the staff of the  
26 Department;  
27 ***transferred employee*** means a person referred to in  
28 subsection (4) who, immediately before becoming a Department  
29 employee, was employed for an indefinite period in the Public  
30 Service.

1 **21. Registration of documents**

2 The relevant officials must —

- 3 (a) take notice of this Part; and  
4 (b) record and register in the appropriate manner the  
5 documents necessary to show the effect of this Part.

6 **22. Exemption from State tax**

7 (1) In this section —

8 *State tax* includes —

- 9 (a) duty chargeable under the *Duties Act 2008*; and  
10 (b) any other tax, duty, fee, levy or charge under a law of  
11 the State.

12 (2) State tax is not payable in relation to —

- 13 (a) anything that occurs by operation of this Part; or  
14 (b) anything done (including a transaction entered into or an  
15 instrument or document of any kind made, executed,  
16 lodged or given) under this Part, or to give effect to this  
17 Part, or for a purpose connected with or arising out of  
18 giving effect to this Part.

19 (3) The Department CEO may certify in writing that —

- 20 (a) a specified thing occurred by operation of this Part; or  
21 (b) a specified thing was done under this Part, or to give  
22 effect to this Part, or for a purpose connected with or  
23 arising out of giving effect to this Part.

24 (4) For all purposes and in all proceedings, a certificate under  
25 subsection (3) is sufficient evidence of the matters it certifies  
26 unless the contrary is shown.

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1 **23. Saving**

2 The operation of any provision of this Part is not to be  
3 regarded —

- 4 (a) as a breach of contract or confidence or otherwise as a  
5 civil wrong;
- 6 (b) as a breach of any contractual provision prohibiting,  
7 restricting or regulating the assignment or transfer of  
8 property, rights or liabilities or the disclosure of  
9 information;
- 10 (c) as giving rise to any remedy by a party to an instrument  
11 or as causing or permitting the termination of any  
12 instrument, because of a change in the beneficial or legal  
13 ownership of any property, right or liability;
- 14 (d) as causing any contract or other instrument to be void or  
15 otherwise unenforceable; or
- 16 (e) as releasing or allowing the release of any surety.

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