

## Tree Plantation Agreements Bill 2000

---

### CONTENTS

---

#### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Application of Act	3

#### **Part 2 — Making tree plantation agreements**

5.	Purpose of agreements	5
6.	Contents and formalities	5
7.	Consents required	5

#### **Part 3 — Effect of registered tree plantation agreements**

8.	Interest in land created on registration	7
9.	Dealings in plantation interests	7
10.	Obligations and restrictions run with the land	8
11.	Other legal effects as to plantation interests	8

#### **Part 4 — Miscellaneous**

12.	No contracting out	9
13.	Regulations	9
14.	Amendments to other Acts	9

#### **Schedule 1 — Amendments to other Acts**

##### **Division 1 — *Agriculture and Related Resources Protection Act 1976***

1.	Section 7 amended	10
----	-------------------	----

**Contents**

---

	<b>Division 2 — <i>Transfer of Land Act 1893</i></b>	
2.	<i>Transfer of Land Act 1893</i> amended	10
3.	Section 4 amended	10
4.	Section 65 amended	11
5.	Section 91 amended	12
6.	Part IV, Division 2A inserted	12
7.	Section 110 amended	17
8.	Section 111 amended	17
9.	Section 129A amended	18
10.	Section 137 amended	18

**Defined Terms**

Western Australia

LEGISLATIVE ASSEMBLY

## **Tree Plantation Agreements Bill 2000**

**A Bill for**

**An Act to provide for the making and effect of certain agreements in relation to tree plantations and for related matters and to consequentially amend the —**

- *Agriculture and Related Resources Protection Act 1976; and*
- *Transfer of Land Act 1893.*

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 2000*.

### **2. Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day fixed by proclamation.
- (2) This Act is not to come into operation before the *Forest Products Act 2000* has come into operation.

### **3. Interpretation**

In this Act —

“**agreement**” means an agreement that complies with section 6(1) and includes, where the context so requires, an agreement as varied by an instrument of variation that is registered under section 104D of the TLA;

“**agreement land**”, in relation to an agreement, means the land described under section 6(1)(e) as the subject of the agreement;

“**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;

“**pastoral lessee**” has the same meaning as it has in the *Land Administration Act 1997*;

“**plantation**” means one or more groups of planted (not naturally occurring) trees;

**“plantation interest”** means the interest in land referred to in section 8(1)(a) and includes, where the context so requires, a plantation interest extended by an instrument of extension that is registered under section 104C of the TLA;

5       **“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;

10       **“Register”** has the same meaning as it has in the TLA;

**“registered”** —

- (a) in relation to freehold land or Crown land that is under the operation of the TLA, means registered under that Act; and
- 15       (b) in relation to land that is subject to the *Registration of Deeds Act 1856*, means registered under that Act;

**“Registrar”** means the Registrar of Titles or the Registrar of Deeds, as is relevant to the case;

**“TLA”** means the *Transfer of Land Act 1893*;

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

#### 4. Application of Act

25       (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.

30       (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 the power to enter into an agreement under this Act; or

**s. 4**

---

- 5 (b) affects the respective powers that the Forest Products Commission or the Executive Director of the Department of Conservation has in relation to a timber share farming agreement as defined in the *Forest Products Act 2000* or the *Conservation and Land Management Act 1984*.

## **Part 2 — Making tree plantation agreements**

### **5. Purpose of agreements**

- 5       (1) An owner of freehold land, a lessee of freehold land or a lessee of Crown land (other than a pastoral lessee) 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.

### **6. Contents and formalities**

- 15       (1) An agreement must —
- (a) be in writing;
  - (b) state that it is an agreement for the purposes of this Act;
  - (c) provide for a thing referred to in section 5(1) to be done;
  - (d) specify the day on which the agreement commences and the day on which the agreement expires; and
  - 20       (e) describe the land that is the subject of the agreement and identify, whether by way of words or a sketch, the portion of the agreement land that is allocated to the plantation or proposed plantation.
- 25       (2) Subject to subsection (1), an agreement may contain any provisions the parties agree to include.

### **7. Consents required**

- (1) An agreement entered into by a lessee of freehold land is of no effect unless the registered proprietor of the freehold interest in

**s. 7**

---

the agreement land has given written consent to the creation of the plantation interest that is the subject of the agreement.

- (2) 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.

5



## **Part 3 — Effect of registered tree plantation agreements**

### **8. Interest in land created on registration**

- (1) On registration of an agreement —
- 5           (a) the property in the trees in a plantation that is the subject  
of the agreement becomes a separate 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) 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.

### **9. Dealings in plantation interests**

- (1) A plantation interest can be —
- 20           (a) transferred, devised, or extended;
- (b) mortgaged or otherwise used as a security; or
- (c) the subject of a caveat or process of execution,  
and otherwise dealt with as a separate interest in the agreement  
land.
- (2) A plantation agreement can be varied.
- 25           (3) A plantation interest and the relevant agreement can be  
surrendered.

**s. 10**

---

**10. Obligations and restrictions run with the land**

5 The obligations (including positive covenants) and restrictions that bind the owner or lessee of the agreement land under a registered agreement are binding also on that person's successors in title, heirs, executors and administrators except to the extent that the agreement otherwise provides.

**11. Other legal effects as to plantation interests**

- 10 (1) A plantation interest does not confer a right to exclusive possession of —
- (a) the relevant agreement land; or
- (b) the portion of the relevant agreement land that is allocated to the plantation or proposed plantation,
- 15 except to the extent that an agreement otherwise provides but, if a right of exclusive possession is conferred under the agreement, the agreement is not to be treated as a lease.
- (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.

## **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 \$10 000.

### **14. Amendments to other Acts**

15 Amendments are made as set out in Schedule 1.

## Schedule 1 — Amendments to other Acts

[s. 14]

### Division 1 — *Agriculture and Related Resources Protection Act 1976*

#### 1. Section 7 amended

5 Section 7(1) of the *Agriculture and Related Resources Protection Act 1976*\* is amended in the definition of “occupier” by inserting after “the land” —

“  
10 , and a person who is the proprietor of a plantation interest, as defined in the *Tree Plantation Agreements Act 2000*, in relation to the land  
”.

[\* Reprinted as at 15 October 1999.]

### Division 2 — *Transfer of Land Act 1893*

#### 15 2. *Transfer of Land Act 1893* amended

The amendments in this Division are to the *Transfer of Land Act 1893*\*.

[\* Reprinted as at 23 July 1999.]

#### 3. Section 4 amended

20 (1) Section 4(1) is amended in the definition of “Dealing” by inserting after “Dealing” —

“ , in relation to Crown land, ”.

(2) Section 4(1) is amended by deleting the definition of “Instrument” and inserting the following definition instead —

25 “  
“**Instrument**” includes —  
(a) a conveyance, assignment, transfer, lease, sublease, mortgage or charge in relation to freehold land;

- 5 (b) a document creating an easement, profit à prendre or restrictive covenant;
- (c) a tree plantation agreement;
- (d) a transfer, mortgage, charge or other dealing in relation to a plantation interest or profit à prendre, an extension of a plantation interest, a variation of a tree plantation agreement or a surrender of a plantation interest and the relevant tree plantation agreement;
- 10 (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 in relation to freehold land; and
- (f) a dealing in relation to Crown land.
- 15 ”.
- (3) Section 4(1) is amended after the definition of “Person” by inserting the following definition —
- “
- 20 **“Plantation interest”** has the same meaning as it has in the *Tree Plantation Agreements Act 2000*.
- ”.
- (4) Section 4(1) is amended after the definition of “Transmission” by inserting the following definition —
- “
- 25 **“Tree plantation agreement”** means an agreement as defined in the *Tree Plantation Agreements Act 2000*.
- ”.
- 4. Section 65 amended**
- 30 (1) Section 65(1) is amended by inserting after “lease” in both places where it occurs —
- “ , tree plantation agreement ”.

**Schedule 1**      Amendments to other Acts

---

(2) Section 65(3)(a) is amended by inserting after “lease” —  
“ , tree plantation agreement ”.

(3) Section 65(3) is amended by inserting after “lease,” —  
“ tree plantation agreement, ”.

5      **5. Section 91 amended**

Section 91 is amended as follows:

(a) by deleting “or charge” and inserting instead —  
“ , charge or plantation interest ”;

10      (b) by deleting “or annuitant” in both places and inserting  
instead —  
“ , annuitant or proprietor of a plantation interest ”.

**6. Part IV, Division 2A inserted**

After section 104 the following Division is inserted in Part IV —

15      “  
**Division 2A — Tree plantation agreements**

**104A. Definitions**

In this Division —

“**agreement**” means a tree plantation agreement;

20      “**agreement land**” has the same meaning as it has in  
the *Tree Plantation Agreements Act 2000*.

**104B. Registration of tree plantation agreements**

(1) A party to an agreement may lodge the agreement, in  
an approved form and on payment of the prescribed  
fee, for registration.

25      (2) An agreement lodged for registration shall be  
accompanied —

- (a) by the written consent of each person who has a registered interest in the agreement land; and
  - (b) if the agreement is entered into by a lessee of freehold land, by the written consent of each person who has a registered interest in the freehold interest of the agreement land.
- (3) If the agreement is entered into by a lessee of Crown land, the agreement is not to be registered unless there is compliance with section 18 of the *Land Administration Act 1997*.

**104C. Extensions of plantation interests**

- (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 —
- (a) each person who is registered as a proprietor of the plantation interest; and
  - (b) either —
    - (i) each person who is an owner of the agreement land (if the relevant agreement was entered into by an owner of the agreement land); or
    - (ii) each person who is a lessee of the agreement land (if the relevant agreement was entered into by a lessee of the agreement land).
- (2) An instrument of extension is not to be registered unless —
- (a) the written consent to the instrument is lodged on behalf of the following persons —
    - (i) each person who has an interest in the agreement land that was registered

- ### 104D. Variation of agreements

- 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 the variations are made and that is signed by —
- (a)   each person who is registered as a proprietor of the plantation interest; and



- 5                    (b) either —
- (i) each person who is an owner of the  
                             agreement land (if the relevant  
                             agreement was entered into by an owner  
                             of the agreement land); or
- (ii) each person who is a lessee of the  
                             agreement land (if the relevant  
                             agreement was entered into by a lessee  
                             of the agreement land).
- 10                (2) An instrument of variation is not to be registered  
                      unless —
- (a) the written consent to the instrument is lodged  
                             on behalf of the following persons —
- 15                        (i) each person who has an interest in the  
                                     agreement land that was registered  
                                     subsequent to the registration of the  
                                     relevant agreement;
- 20                        (ii) if the relevant agreement was entered  
                                     into by a lessee of freehold land, each  
                                     person who has an interest in the  
                                     freehold interest of the agreement land  
                                     that was registered subsequent to the  
                                     registration of the relevant agreement;  
                                     and
- 25                        (iii) each person who has a registered  
                                     interest in the plantation interest;
- 30                        (b) 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 2000*;
- (c) in the case where the agreement was entered  
                                     into by a lessee of Crown land, there is  
                                     compliance with section 18 of the *Land*

*Administration Act 1997* in relation to the variation; and

- (d) the instrument is accompanied by the prescribed fee.

- 5            (3) A variation instrument cannot be used to effect a change to the parties to an agreement, a change to the area of a plantation that is the subject of an agreement or an extension or other change to the term of a plantation interest.

10            **104E. Surrender of plantation interests and agreements**

- (1) A plantation interest and the relevant agreement may be wholly or partially surrendered by an instrument of surrender in an approved form that is signed by —

- 15            (a) each person who is registered as a proprietor of the plantation interest; and

- (b) either —

- 20            (i) each person who is an owner of the agreement land (if the relevant agreement was entered into by an owner of the agreement land); or

- (ii) each person who is a lessee of the agreement land (if the relevant agreement was entered into by a lessee of the agreement land).

- 25            (2) An instrument of surrender is not to be registered unless —

- 30            (a) each registered interest in the plantation interest and caveat lodged in respect of the plantation interest has been surrendered, discharged or withdrawn;

- (b) in the case where the agreement was entered into by a lessee of Crown land, there is

compliance with section 18 of the *Land Administration Act 1997* in relation to the surrender; and

- 5 (c) the instrument is accompanied by the prescribed fee.
- ”.

**7. Section 110 amended**

- (1) Section 110 is amended before “Subject” by inserting the subsection designation “(1)”.
- 10 (2) At the end of section 110 the following subsection is inserted —
- “
- (2) Where subsection (1) applies to the sale of an estate or interest in land other than a plantation interest, that subsection is to be read as if after “excepting”, there
- 15 appeared “a plantation interest,”.
- ”.

**8. Section 111 amended**

- (1) Section 111 is amended before “Subject” by inserting the subsection designation “(1)”.
- 20 (2) At the end of section 111 the following subsection is inserted —
- “
- (2) Nothing in subsection (1) enables a mortgagee or annuitant or transferee whose estate or interest in land is other than in respect of a plantation interest to take
- 25 the action referred to in that subsection in respect of a plantation interest to which the mortgagee or annuitant or transferee has consented in writing.
- ”.

**Schedule 1**      Amendments to other Acts

---

**9.        Section 129A amended**

Section 129A(1) is amended as follows:

- (a)    by deleting “or charge” and inserting instead —  
         “ , charge or plantation interest ”;
- 5        (b)    by deleting “or annuitant” and inserting instead —  
         “ , annuitant or proprietor of the plantation interest ”.

**10.       Section 137 amended**

- (1)    Section 137 is amended before “Any” by inserting the subsection designation “(1)”.
- 10       (2)    At the end of section 137 the following subsection is inserted —  
         “  
         (2)    A party to a tree plantation agreement may, before the  
         agreement is registered, lodge a caveat under  
         subsection (1) as if the party were claiming an interest  
15       in the land that is the subject of the agreement and, in  
         addition to the requirements of subsection (1), a copy  
         of the agreement must be lodged with the caveat.  
         ”.

=====

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined Term	Provision(s)
agreement .....	3
agreement land.....	3
Crown land .....	3
owner .....	3
pastoral lessee .....	3
plantation .....	3
plantation interest .....	3
product.....	3
Register.....	3
registered .....	3
Registrar .....	3
TLA.....	3
tree.....	3