

Version No. 010
Forestry Rights Act 1996
Act No. 29/1996

Version incorporating amendments as at 13 September 2001

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Version No. 010
Forestry Rights Act 1996
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The Parliament of Victoria enacts as follows:

1. Purpose

The purpose of this Act is to provide for the creation of forest property rights.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Definitions

(1) In this Act—

"carbon rights agreement" means an agreement entered into under section 12;

S. 3 amended by No. 8/2001 s. 4(3) (ILA s. 39B(1)).

S. 3(1) def. of "carbon rights agreement" inserted by No. 8/2001 s. 4(1).

"carbon sequestration right" means a right to commercially exploit carbon sequestered by trees;

S. 3(1) def. of "carbon sequestration right" inserted by No. 8/2001 s. 4(1).

"Department Head" means the Department Head (within the meaning of the **Public Sector Management and Employment Act 1998**) of the Department of Natural Resources and Environment;

S. 3(1) def. of "Department Head" inserted by No. 8/2001 s. 4(1).

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s. 3

S. 3(1) def. of
"forest
property"
amended by
No. 8/2001
s. 4(2).

"forest property" means—

- (a) all parts of trees including any parts below the ground; and
- (b) the products of trees whether or not those products have become separated from those trees prior to being harvested; and
- (c) carbon sequestered by trees;

"forest property agreement" means an agreement entered into under section 5 and that complies with section 6;

"forest property owner" means—

- (a) a person who is entitled to a forest property right under a forest property agreement; or
- (b) any assignee of that right;

"forest property right" means a right granted by a forest property agreement;

S. 3(1) def. of
"holder of a
registered
mortgage or
charge"
inserted by
No. 8/2001
s. 7.

"holder of a registered mortgage or charge" means—

- (a) a person or body that is a mortgagee under a registered instrument of mortgage; or
- (b) a person or body that is entitled to the benefit of a charge under a registered charge;

S. 3(1) def. of
"owner"
amended by
No. 85/1998
s. 24(Sch.
item
24.1(a)(b)).

"owner" means—

- (a) in relation to land which is under the operation of the **Transfer of Land Act 1958** (other than land in an identified folio under that Act), the person who is registered or entitled to be registered as

proprietor of an estate in fee simple in the land; and

- (b) in relation to land which is in an identified folio under the **Transfer of Land Act 1958** or is not under the operation of the **Transfer of Land Act 1958**, the person who is the owner of the fee or equity of redemption;

"registered mortgage or charge", in relation to land which is subject to a forest property agreement, means—

S. 3(1) def. of "registered mortgage or charge" inserted by No. 8/2001 s. 7.

- (a) an instrument of mortgage—
 - (i) recorded on the folio of the Register within the meaning of the **Transfer of Land Act 1958** relating to that land; or
 - (ii) registered under the **Property Law Act 1958**;
- (b) a charge—
 - (i) recorded on the folio of the Register within the meaning of the **Transfer of Land Act 1958** relating to that land; or
 - (ii) registered under the **Property Law Act 1958**;

"trees" means trees, shrubs, bushes, seedlings, saplings and reshoots, whether alive or dead.

- (2) In this Act, a reference to "carbon sequestered by trees" is a reference to the process by which carbon is sequestered in trees by the absorption by trees of carbon dioxide from the atmosphere.

S. 3(2) inserted by No. 8/2001 s. 4(3).

4. Crown land not covered by this Act

This Act does not apply to Crown land.

5. Agreement creating forest property right

(1) An owner of land may enter into an agreement with a person—

(a) to grant to that person a right to—

(i) plant, maintain and harvest forest property on that land; or

(ii) maintain and harvest forest property planted on that land or derived from forest property planted on that land; and

(ab) to grant to that person a carbon sequestration right in relation to forest property on that land; and

(b) to vest the ownership of the forest property in that person; and

(c) subject to the agreement, to permit the person—

(i) to enter the land which is subject to the agreement; and

(ii) to carry out any works which are necessary for the purposes of planting, maintaining or harvesting the forest property; and

(iii) to monitor and measure carbon sequestered by trees on that land.

S. 5
amended by
No. 8/2001
s. 8(1) (ILA
s. 39B(1)).

S. 5(1)(ab)
inserted by
No. 8/2001
s. 5(1).

S. 5(1)(c)(ii)
amended by
No. 8/2001
s. 5(2).

S. 5(1)(c)(iii)
inserted by
No. 8/2001
s. 5(2).

- (2) An owner of land must not enter into a forest property agreement under this section if the agreement relates to land which is subject to a registered mortgage or charge unless at least 14 days before the agreement is entered into, the owner of the land has notified the holder of the registered mortgage or charge that it is proposed to enter into the agreement.

S. 5(2)
inserted by
No. 8/2001
s. 8(1).

6. What must be included in an agreement?

- (1) An agreement under section 5 is a forest property agreement if—
- (a) it is in writing; and
 - (b) it binds the owner of the land to the covenants specified in the agreement; and
 - (c) it is identified as being a forest property agreement; and
 - (d) it specifies the following—
 - (i) the parties to the agreement;
 - (ii) the land to which it applies;
 - (iii) the forest property to which it applies, including a description of that forest property sufficient to adequately identify it;
 - (iv) the date on or circumstances under which the agreement terminates;
 - (v) the rights and duties of the parties to the agreement.
- (2) An agreement under section 5 may specify any other matters consistent with the matters set out in sub-section (1)(d) to which the parties agree.

s. 7

S. 7
amended by
No. 8/2001
s. 8(2) (ILA
s. 39B(1)).

7. Amendment or termination of agreement

- (1) A forest property agreement may, at any time, be amended or terminated wholly or in part or as to any part of the land by written agreement between the forest property owner and all persons who are bound by any covenant in the agreement.
- (2) If the forest property agreement to be amended relates to land which is subject to a registered mortgage or charge, the parties to that agreement must not amend that agreement unless at least 14 days before the agreement is amended, the owner of the land has notified the holder of the registered mortgage or charge that it is proposed to amend the agreement.

S. 7(2)
inserted by
No. 8/2001
s. 8(2).

7A. Form of notification

A notice given under section 5(2) or section 7(2) must be in writing and must—

- (a) be served on the holder of the registered mortgage or charge personally or by registered post; and
- (b) include a copy of—
 - (i) the forest property agreement to be entered into; or
 - (ii) in the case of an amendment of an agreement, a copy of that amendment; and
- (c) state that it is a requirement of the Act that at least 14 days notice in writing is given to the holder of a registered mortgage or charge before a forest property agreement is entered into or amended.

S. 7A
inserted by
No. 8/2001
s. 9.

8. Application to Registrar of Titles for registration of agreement

- (1) The forestry property owner may apply to the Registrar of Titles to register a forest property agreement. S. 8(1) substituted by No. 85/1998 s. 24(Sch. item 24.2).

- (2) An application must include a copy of the forest property agreement.

- (3) The Registrar of Titles must make a recording of the agreement in the Register. S. 8(3) substituted by No. 85/1998 s. 24(Sch. item 24.3).

- (4) The amendment of this Act by section 24 of the **Transfer of Land (Single Register) Act 1998** does not affect the operation, effect or enforcement of a covenant in an agreement registered under the **Property Law Act 1958** and existing immediately before the commencement of that section 24. S. 8(4) substituted by No. 85/1998 s. 24(Sch. item 24.4).

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S. 8(5) repealed by No. 85/1998 s. 24(Sch. item 24.4).

9. Effect of registration

After the making of a recording in the Register—

- (a) the burden of any covenant in the forest property agreement runs with the land affected; and

- (b) the forest property owner may enforce the covenant against any person who derives title from the person who entered into the covenant as if it were a restrictive covenant, despite the fact that it may be positive in nature or that it is not for the benefit of any land of the forest property owner.

S. 9 amended by No. 85/1998 s. 24(Sch. item 24.5).

10. Termination or amendment of the registration

- (1) The forest property owner must advise the Registrar of Titles of any termination or amendment of a forest property agreement (whether wholly or in part or as to any part of the land which is subject to the agreement) within 21 days of that termination or amendment.
- (2) The Registrar of Titles must make any amendments to or recordings in the Register that are necessary as a result of the termination or amendment of the forest property agreement.

S. 10(2) substituted by No. 85/1998 s. 24(Sch. item 24.6).

S. 10(3)(4) repealed by No. 85/1998 s. 24(Sch. item 24.7).

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11. Status of forest property agreement and forest property rights in certain circumstances

Despite anything in any Act or law to the contrary—

- (a) a forest property agreement is deemed not to be a subdivision of land; and
- (b) a forest property right is deemed not to be an interest in land; and
- (c) a right of entry or access to land given under a forest property agreement is deemed not to be a right of way.

12. Carbon rights agreements

- (1) A forest property owner may enter into an agreement with a person to grant the forest property owner's carbon sequestration right to that person.

S. 12 inserted by No. 8/2001 s. 6.

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- (2) A carbon rights agreement must—
- (a) be in writing; and
 - (b) specify the following—
 - (i) the parties to the agreement; and
 - (ii) the land to which the agreement applies; and
 - (iii) the rights and duties of the parties to the agreement; and
 - (iv) the date or circumstances under which the agreement terminates.
- (3) A carbon rights agreement may specify any other matters consistent with the matters set out in sub-section (2) to which the parties agree.

13. Notification to Department Head

S. 13
inserted by
No. 8/2001
s. 6.

- (1) A person who is granted a carbon sequestration right under a carbon rights agreement must provide the following details to the Department Head in writing within 28 days after the carbon rights agreement is entered into—
- (a) notification that a carbon rights agreement has been entered into; and
 - (b) the land to which that agreement applies; and
 - (c) the area of land in hectares to which that agreement applies.

Penalty: 1 penalty unit.

- (2) A failure to notify the Department Head under sub-section (1) does not affect the validity of any carbon rights agreement.

s. 14

S. 14
inserted by
No. 8/2001
s. 6.

14. Carbon rights agreement not forest property agreement or interest in land

- (1) A carbon rights agreement is not a forest property agreement for the purposes of this Act.
- (2) A carbon rights agreement is deemed not to be an interest in land.

S. 15
inserted by
No. 8/2001
s. 6.

15. Existing forest property agreements include carbon sequestration right

- (1) A forest property right granted under a forest property agreement in force immediately before the commencement of the **Forestry Rights (Amendment) Act 2001** is deemed to include a carbon sequestration right in relation to the forest property on the land to which that agreement relates.
 - (2) A carbon sequestration right deemed by sub-section (1) to be included in a forest property right granted under a forest property agreement may be dealt with in accordance with this Act as amended by the **Forestry Rights (Amendment) Act 2001**.
 - (3) Sub-section (1) does not apply to any forest property agreement in force immediately before the commencement of the **Forestry Rights (Amendment) Act 2001** if that agreement expressly provides that the forest property right granted does not include any carbon sequestration right.
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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 20 June 1996

Legislative Council: 8 October 1996

The long title for the Bill for this Act was "to provide for the creation of forest property rights and for other purposes."

The **Forestry Rights Act 1996** was assented to on 22 October 1996 and came into operation on 22 October 1996: section 2.

2. Table of Amendments

This Version incorporates amendments made to the **Forestry Rights Act 1996** by Acts and subordinate instruments.

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 24) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Forestry Rights Act 1996**

Forestry Rights (Amendment) Act 2001, No. 8/2001

Assent Date: 8.5.01
Commencement Date: 9.5.01: s. 2
Current State: All of Act in operation

3. Explanatory Details

No entries at date of publication.