

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

Carbon sequestration in relation to a tree or forest is defined in section 87A of the Conveyancing Act 1919 as the process by which the tree or forest absorbs carbon dioxide from the atmosphere. A carbon sequestration right in relation to land confers a right to the legal, commercial or other benefit of carbon sequestration by any existing or future tree on the land. Carbon sequestration rights are created in accordance with the provisions of Division 4 of Part 6 of the Conveyancing Act 1919 (which also provides for the imposition of covenants and restrictions on use in connection with the creation of such rights) and are usually associated with the creation of forestry rights that relate to the establishment and maintenance of trees on the land.

The objects of this Bill are as follows:

- (a) to amend the Crown Lands Act 1989 to expressly authorise the Minister administering that Act to grant carbon sequestration and related forestry rights in respect of Crown land,
- (b) to amend the Western Lands Act 1901 to expressly authorise the Minister administering that Act to grant carbon sequestration and related forestry rights in respect of land held under lease under that Act,
- (c) to authorise a perpetual lessee under either Act to grant, with the relevant Minister's consent, carbon sequestration and related forestry rights in respect of the land that is subject to the perpetual lease,
- (d) to ensure that the Minister administering the Forestry Act 1916 is consulted before carbon sequestration and related forestry rights are granted under the Crown Lands Act 1989 or the Western Lands Act 1901 in respect of Crown-timber land,
- (e) to amend the Forestry Act 1916 to make it clear that the Forestry Commission may grant forestry rights for its own benefit in respect of State forests, timber reserves and land owned by it,
- (f) to make other amendments of a minor or consequential nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Crown Lands Act 1989, the Western Lands Act 1901, the Forestry Act 1916 and the Aboriginal Land Rights Act 1983 set out in Schedules 1–4.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Crown Lands Act 1989

Schedule 1 inserts proposed Division 5A of Part 4 of the Crown Lands Act 1989. The new Division will authorise the granting and creation of carbon sequestration and related forestry rights in respect of Crown land. The proposed Division will only apply to the extent that any such forestry right consists wholly or partly of a carbon sequestration right.

The granting (or consent to the granting) of forestry rights in respect of Crown land will be subject to such terms and conditions as the Minister determines. If the land is a Crown reserve, the provisions of section 34A of the Crown Lands Act 1989 will apply (eg the Minister must consult the reserve trust manager or relevant government agency that administers the reserve). Forestry rights may also be granted in respect

of land held under a perpetual lease by the lessee, but only with the consent of the Minister.

The new Division also describes how forestry rights granted by the Minister (or a perpetual lessee) are actually created. Covenants and restrictions on use may be imposed under the Conveyancing Act 1919 on land that is the subject of any such forestry right. Provision is also made to ensure that the Minister administering the Forestry Act 1916 is consulted before any forestry right is granted (or consented to) under the new Division in respect of Crown-timber land (other than State forests and timber reserves). In the case of Crown-timber land that is a State forest or timber reserve, it is the Forestry Commission that may grant or confer forestry rights.

Schedule 2 Amendment of Western Lands Act 1901

Schedule 2 [4] inserts proposed Part 9D of the Western Lands Act 1901. The new Part is based on, and contains provisions similar to, the new Division 5A of Part 4 of the Crown Lands Act 1989 except that it refers to land in the Western Division held under a lease granted under the Western Lands Act 1901 and it will be the Minister administering that Act who grants (or who consents to the granting of) forestry rights in respect of that land. To the extent that Crown land in the Western Division is not land held under a Western lands lease, the amendment made by Schedule 2 [5] will apply the provisions of proposed Division 5A of Part 4 of the Crown Lands Act 1989 to any such Crown land.

Schedule 2 [1] makes it clear that a forestry right can only be created in respect of land under a Western lands lease in accordance with the new Part 9D. Schedule 2 [2] provides for existing Western lands leases to be altered so as to enable the land to be used for the purposes of carbon sequestration. Schedule 2 [3] enables new Western lands leases to be granted for the purposes of carbon sequestration (including establishing a plantation for that purpose).

Schedule 3 Amendment of Forestry Act 1916

Schedule 3 contains amendments to the Forestry Act 1916 (that are mainly consequential on the proposed amendments to the Crown Lands Act 1989 and the Western Lands Act 1901) that will enable carbon sequestration and related forestry rights to be granted under those Acts in respect of Crown land that is Crown-timber land (other than State forests and timber reserves). Carbon sequestration and related forestry rights may continue to be granted by the Forestry Commission in respect of State forests. The power of the Commission to grant such rights for its own benefit is also clarified.

Schedule 4 Amendment of Aboriginal Land Rights

Act 1983

Schedule 4 amends section 36 of the Aboriginal Land Rights Act 1983 to ensure that the Minister administering that Act may treat Crown land that is subject to carbon sequestration or other forestry rights as “claimable Crown lands” for the purposes of that section.