



New South Wales

# Carbon Rights Legislation Amendment Bill 1998

## Explanatory note

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

### Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Conveyancing Act 1919*:
    - (i) to recognise that rights associated with carbon sequestered from the atmosphere by trees and forests may be a kind of forestry right and can be the subject of certain forestry covenants, and
    - (ii) to make it clear that an obligation in respect of the vesting of ownership of trees on land that is the subject of a forestry right may constitute a forestry covenant, and
    - (iii) to clarify the elements of the existing definition of *forestry right* by making it clear that a forestry right exists if an interest in land entitles its holder to enter the land and to establish, maintain and harvest (or to just maintain and harvest) a crop of trees on the land even if no entitlement is also conferred to construct and use buildings, works and other facilities on the land, and
    - (iv) to provide for matters of a savings or transitional nature,
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- (b) to amend the *Forestry Act 1916* to enable the Forestry Commission to acquire and trade in such rights, provide various services to investors and incorporate a corporation (whether by joining with any other person or otherwise) to assist it in exercising its functions.
- (c) to amend the *Electricity (Pacific Power) Act 1950* and *Energy Services Corporations Act 1995* to enable electricity generators and distributors to trade in such rights.

## 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 giving effect to the amendments to the Acts set out in Schedules 1–4.

**Schedules 1–4** make the amendments to the *Conveyancing Act 1919*, *Electricity (Pacific Power) Act 1950*, *Energy Services Corporations Act 1995* and *Forestry Act 1916* described above.



New South Wales

# Carbon Rights Legislation Amendment Bill 1998

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendments	2

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### Schedules

1 Amendment of Conveyancing Act 1919 No 6	3
2 Amendment of Electricity (Pacific Power) Act 1950 No 22	6
3 Amendment of Energy Services Corporations Act 1995 No 95	7
4 Amendment of Forestry Act 1916 No 55	8

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New South Wales

## Carbon Rights Legislation Amendment Bill 1998

No , 1998

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### A Bill for

An Act to amend the *Conveyancing Act 1919* to recognise that rights associated with carbon sequestered by trees and forests from the atmosphere may be a species of forestry right and be the subject of a forestry covenant; to amend the *Forestry Act 1916* to enable the Forestry Commission to acquire and trade in such rights and to confer additional powers on the Commission; to amend various other Acts to enable electricity generators and distributors to trade in such rights; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Carbon Rights Legislation Amendment Act 1998*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendments**

The Acts specified in Schedules 1–4 are amended as set out in those Schedules.



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**Schedule 1    Amendment of Conveyancing Act  
1919 No 6**

(Section 3)

**[1]    Section 87A Definitions**

Omit “or” from paragraph (b) of the definition of *forestry covenant*. 5

**[2]    Section 87A, definition of “forestry covenant”**

Insert after paragraph (c) of the definition of *forestry covenant*:

- (d) the provision of access to or the maintenance of trees or forests on land that is the subject of any carbon sequestration right, or 10
- (e) the ownership of any tree or trees on land that is the subject of a forestry right to be vested in the person who owns the forestry right,

**[3]    Section 87A**

Omit the definition of *forestry right* from section 87A. 15  
Insert in alphabetical order:

*carbon sequestration* by a tree or forest means the process by which the tree or forest absorbs carbon dioxide from the atmosphere.

*carbon sequestration right*, in relation to land, means a right conferred on a person by agreement or otherwise to the legal, commercial or other benefit (whether present or future) of carbon sequestration by any existing or future tree or forest on the land. 20

*forestry right*, in relation to land, means: 25

- (a) an interest in the land pursuant to which a person having the benefit of the interest is entitled:

- (i) to enter the land and establish, maintain and harvest (or to maintain and harvest) a crop of trees on the land, or
    - (ii) to enter the land and establish, maintain and harvest (or to maintain and harvest) a crop of trees on the land and to construct and use such buildings, works and facilities as may be necessary or convenient to enable the person to establish, maintain and harvest the crop, or
  - (b) a carbon sequestration right in respect of the land, or
  - (c) a combination of the interest and right referred to in paragraphs (a) and (b).
- [4]      Section 88AB   Forestry rights to be deemed to be profits à prendre**
- Insert at the end of the section:
- (2) If a forestry right consists in whole or in part of a carbon sequestration right, the profit à prendre deemed to exist by subsection (1) in relation to the carbon sequestration right consists of the following:
    - (a) the profit from the land is taken to be the legal, commercial or other benefit (whether present or future) of carbon sequestration by any existing or future tree or forest on the land that is the subject of the carbon sequestration right,
    - (b) the right to take something from the land is taken to be the right to the benefit conferred by the carbon sequestration right.
- [5]      Schedule 9   Savings, transitional and other provisions**
- Insert at the end of clause 1 (1):

*Carbon Rights Legislation Amendment Act 1998*

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[6] **Schedule 9**

Insert in Schedule 9 (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of  
Carbon Rights Legislation Amendment Act  
1998** 5

**Definitions**

In this Part:

*amending Act* means the *Carbon Rights Legislation  
Amendment Act 1998*.

*existing forestry right* means any forestry right (within 10  
the meaning of section 87A of this Act as in force  
immediately before the commencement of Schedule 1  
[3] to the amending Act) that is subsisting immediately  
before that commencement.

**Existing forestry rights preserved** 15

On the commencement on Schedule 1 [3] to the  
amending Act, any existing forestry right is taken to be a  
forestry right within the meaning of section 87A of this  
Act as amended by that Schedule.

**Application of new definitions of forestry right and  
forestry covenant** 20

Subject to this Part, an amendment made to this Act by  
Schedule 1 [1]–[4] to the amending Act applies only to  
an interest, right or obligation that arises on or after the  
commencement of the amendment. 25



**Schedule 2      Amendment of Electricity (Pacific Power) Act 1950 No 22**

(Section 3)

**Section 9 Principal functions of Pacific Power**

Insert after section 9 (1):

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- (2) Pacific Power may acquire, hold, sell or otherwise deal with or trade in carbon sequestration rights within the meaning of section 87A of the *Conveyancing Act 1919*.

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**Schedule 3    Amendment of Energy Services  
Corporations Act 1995 No 95**

(Section 3)

**[1]    Section 6 Functions of electricity generators**

Insert after section 6 (3):

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- (3A) An electricity generator may acquire, hold, sell or otherwise deal with or trade in carbon sequestration rights within the meaning of section 87A of the *Conveyancing Act 1919*.

**[2]    Section 9 Functions of energy distributors**

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Insert after section 9 (3):

- (3A) An energy distributor may acquire, hold, sell or otherwise deal with or trade in carbon sequestration rights within the meaning of section 87A of the *Conveyancing Act 1919*.

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**Schedule 4      Amendment of Forestry Act 1916  
No 55**

(Section 3)

**[1]      Section 11 Powers and duties of the commission**

Omit "corporation or" from section 11 (1) (m1) wherever occurring.      5

**[2]      Section 11 (1) (m1) (iii)**

Omit "or" where lastly occurring.

**[3]      Section 11 (1) (m2)–(m4)**

Insert after section 11 (1) (m1):

(m2) may form a corporation (whether by joining with      10  
any other person or otherwise) for the purpose of  
facilitating the exercise of any of the  
commission's functions under this Act,

(m3) may do any one or more of the following:

(i) procure the use of land on behalf of      15  
investors under a forestry right or by  
purchase, lease or otherwise,

(ii) establish and maintain timber plantations on  
behalf of investors or other persons,

(iii) harvest and market timber grown on behalf      20  
of investors or other persons,

(m4) may exercise any of the powers referred to in  
section 33C, or

**[4]      Part 4A**

Insert after Part 4:      25

**Part 4A      Carbon sequestration rights**

**33B Definitions**

In this Part:

*carbon sequestration* has the same meaning as it has in  
section 87A of the *Conveyancing Act 1919*.      30

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*carbon sequestration right* has the same meaning as it has in section 87A of the *Conveyancing Act 1919*.

*holder*, in relation to a carbon sequestration right, means the person who is entitled to exercise (or who in the future may be entitled to exercise) the right.

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**33C Powers of commission in respect of carbon sequestration rights**

The commission may:

- (a) acquire, hold, sell or otherwise deal with or trade in carbon sequestration rights, and
- (b) exercise the powers referred to in section 11 (1) (m3) for the benefit of investors in carbon sequestration rights, and
- (c) provide services in respect of the verification of the quantity of carbon sequestration by any tree or forest.

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## CARBON RIGHTS LEGISLATION AMENDMENT BILL

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Schedule of the amendment referred to in the Legislative Council's Message of 11 November 1998.

Page 3, Schedule 1 [3], lines 20-24. Omit all words on those lines. Insert instead:

*carbon sequestration right*, in relation to land, means a right conferred on a person by agreement or otherwise to the legal, commercial or other benefit (whether present or future) of carbon sequestration by any existing or future tree or forest on the land after 1990.

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