



New South Wales

Crown Lands Legislation Amendment (Carbon Sequestration) Bill 2006

Explanatory note

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.

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Explanatory note

First print



New South Wales

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No. , 2006

A Bill for

An Act to amend the *Crown Lands Act 1989* and the *Western Lands Act 1901* to enable carbon sequestration and related forestry rights to be granted in respect of Crown land (including land held under Western lands lease); and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crown Lands Legislation Amendment (Carbon Sequestration) Act 2006</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Acts	7
The Acts specified in Schedules 1–4 are amended as set out in those Schedules.	8 9
4 Repeal of Act	10
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	11 12
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	13 14

Schedule 1	Amendment of Crown Lands Act 1989	1
	No 6	2
	(Section 3)	3
Part 4, Division 5A		4
Insert after Division 5:		5
Division 5A	Carbon sequestration and related forestry rights	6
		7
59A	Definitions	8
	In this Division:	9
	<i>carbon sequestration right</i> and <i>forestry right</i> have the same meanings as in section 87A of the <i>Conveyancing Act 1919</i> .	10
	Note. A forestry right is defined in section 87A of the <i>Conveyancing Act 1919</i> to include a carbon sequestration right in relation to land (carbon sequestration being the process by which a tree or forest absorbs carbon dioxide from the atmosphere). This Division applies to a forestry right only to the extent that it consists in whole or in part of a carbon sequestration right.	11
	A forestry right is, for all purposes, taken to be a profit à prendre (see section 88AB of the <i>Conveyancing Act 1919</i>).	12
	Crown land includes any land dedicated under this Act for a public purpose.	13
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59B	Application of Division	22
(1)	This Division applies only in relation to the granting and creation of a forestry right to the extent that it consists in whole or in part of a carbon sequestration right.	23
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(2)	Nothing in this Division limits the power of the Minister to otherwise deal with Crown land.	26
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59C	Granting and creation of carbon sequestration and related forestry rights	28
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(1)	The Minister may, on such terms and conditions as the Minister determines, grant a forestry right in respect of Crown land.	30
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(2)	In the case of a Crown reserve, the provisions of section 34A apply to and in respect of the granting by the Minister of a forestry right in respect of the reserve as if the forestry right were a relevant interest as referred to in that section.	32
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- (3) In the case of Crown land that is the subject of a perpetual lease, the Minister may, on such terms and conditions as the Minister determines, consent to the lessee granting a forestry right in respect of the land the subject of the lease. 1
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- (4) The lessee of any land that is the subject of a perpetual lease may, with the consent of the Minister under subsection (3), grant a forestry right in respect of the land on such terms and conditions as the Minister determines. 5
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- (5) A forestry right referred to in this section: 9
- (a) is, in the case of land that is subject to the provisions of the *Real Property Act 1900*, created in the way provided in that Act or in section 88B of the *Conveyancing Act 1919*, or 10
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- (b) is, in the case of land that is not subject to the provisions of the *Real Property Act 1900*, created: 14
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- (i) in the way provided in section 88B of the *Conveyancing Act 1919*, or 16
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- (ii) if the Minister so consents, by instrument registered in the General Register of Deeds, or 18
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- (iii) by notification in the Gazette (except in the case of a forestry right granted by a perpetual lessee). 20
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- (6) Without limiting the terms and conditions that may be determined by the Minister under this section, any such terms and conditions may restrict any dealings in the forestry right concerned. 22
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- (7) The Minister may not grant a forestry right in respect of Crown land unless the Minister is satisfied that any lessee of the land has consented to the forestry right being granted. 26
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- (8) Before granting a forestry right in respect of Crown land that is Crown-timber land within the meaning of the *Forestry Act 1916* (or before consenting to the granting of any such forestry right), the Minister must consult the Minister administering the *Forestry Act 1916*. 29
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- Note.** In the case of Crown-timber land that is a State forest or timber reserve, it is the Forestry Commission that may grant a forestry right in respect of the land. 34
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- (9) Without limiting the operation of Division 4 of Part 6 of the *Conveyancing Act 1919*, restrictions on the use of land and covenants may, in accordance with that Division, be imposed on Crown land that is the subject of a forestry right granted under this section. 37
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Schedule 2	Amendment of Western Lands Act 1901	1
	No 70	2
	(Section 3)	3
[1] Section 18G Dealings in leased land		4
Insert after section 18G (6):		5
(7)	Land held under a lease under this Act may not be transferred or conveyed for the purpose of creating a forestry right (within the meaning of section 87A of the <i>Conveyancing Act 1919</i>) that consists in whole or in part of a carbon sequestration right otherwise than in accordance with Part 9D of this Act.	6 7 8 9 10
[2] Section 18J Conditions attaching to leases: alteration by consent		11
Insert “or relating to the use of land for the purposes of carbon sequestration within the meaning of section 87A of the <i>Conveyancing Act 1919</i> ” after “payable under the lease”.		12 13 14
[3] Section 28A Granting of leases after 1989 amending Act		15
Insert after section 28A (1) (e):		16
(e1)	the use of land for the purposes of carbon sequestration within the meaning of section 87A of the <i>Conveyancing Act 1919</i> (including for plantation purposes), or for any such purpose combined with any one or more of the other purposes referred to in this subsection, or	17 18 19 20 21
[4] Part 9D		22
Insert after Part 9C:		23
Part 9D Carbon sequestration and related forestry rights		24 25
35V Definitions		26
In this Part:		27
	<i>carbon sequestration right</i> and <i>forestry right</i> have the same meanings as in section 87A of the <i>Conveyancing Act 1919</i> .	28 29
	Note. A forestry right is defined in section 87A of the <i>Conveyancing Act 1919</i> to include a carbon sequestration right in relation to land (carbon sequestration being the process by which a tree or forest absorbs carbon dioxide from the atmosphere). This Part applies to a forestry right only to the extent that it consists in whole or in part of a carbon sequestration right.	30 31 32 33 34 35

	A forestry right is, for all purposes, taken to be a profit à prendre (see section 88AB of the <i>Conveyancing Act 1919</i>).	1 2
35W	Application of Part	3
	This Part applies only in relation to the granting or creation of a forestry right to the extent that it consists in whole or in part of a carbon sequestration right.	4 5 6
35X	Granting and creation of forestry rights in respect of land held under lease	7 8
	(1) The Minister may:	9
	(a) on application made in the approved form, and	10
	(b) on such terms and conditions as the Minister determines, grant a forestry right in respect of land held under a lease, but only with the consent of the lessee of that land.	11 12 13
	(2) In the case of land that is the subject of a lease in perpetuity, the Minister may, on such terms and conditions as the Minister determines, consent to the lessee granting a forestry right in respect of the land the subject of the lease.	14 15 16 17
	(3) The lessee of any land that is the subject of a lease in perpetuity may, with the consent of the Minister under subsection (2), grant a forestry right in respect of the land on such terms and conditions as the Minister determines.	18 19 20 21
	(4) A forestry right referred to in this section:	22
	(a) is, in the case of land that is subject to the provisions of the <i>Real Property Act 1900</i> , created in the way provided in that Act or in section 88B of the <i>Conveyancing Act 1919</i> , or	23 24 25 26
	(b) is, in the case of land that is not subject to the provisions of the <i>Real Property Act 1900</i> , created:	27
	(i) in the way provided in section 88B of the <i>Conveyancing Act 1919</i> , or	28 29 30
	(ii) if the Minister so consents, by instrument registered in the General Register of Deeds, or	31 32
	(iii) by notification in the Gazette (except in the case of a forestry right granted by a perpetual lessee).	33 34
	(5) Without limiting the terms and conditions that may be determined by the Minister under this section, any such terms and conditions may restrict any dealings in the forestry right.	35 36 37

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- (6) Before granting a forestry right in respect of land that is Crown-timber land within the meaning of the *Forestry Act 1916* (or before consenting to the granting of any such forestry right), the Minister must consult the Minister administering the *Forestry Act 1916*.
Note. In the case of Crown-timber land that is a State forest or timber reserve, it is the Forestry Commission that may grant a forestry right in respect of the land.
- (7) Without limiting the operation of Division 4 of Part 6 of the *Conveyancing Act 1919*, restrictions on the use of land and covenants may, in accordance with that Division, be imposed on land that is the subject of a forestry right granted under this section.

[5] Schedule 2 Applicable provisions of the Crown Lands Act 1989

Insert after the matter relating to Division 5 of Part 4:

Division 5A (Carbon sequestration and related forestry rights)—
the whole Division except in relation to land that is the subject of
a lease under the *Western Lands Act 1901*.

Schedule 3	Amendment of Forestry Act 1916 No 55	1
	(Section 3)	2
[1] Section 11 Powers and duties of the commission		3
Omit section 11 (1) (m5). Insert instead:		4
(m5) without limiting paragraph (m4), may, for any purpose consistent with its objects, grant a forestry right (within the meaning of section 87A of the <i>Conveyancing Act 1919</i>) in respect of a State forest, timber reserve or land owned by it, including any such right that is for the benefit of the commission, and only with the consent of any lessee in the case of a timber reserve, or		5 6 7 8 9 10 11
[2] Section 11AA		12
Insert after section 11:		13
11AA Limit on power to take timber etc from land subject to forestry right		14
Despite any other provision of this Act, the commission is not authorised to take, or authorise any other person to take, any timber, products or forest materials from any Crown-timber land that is the subject of a forestry right within the meaning of section 87A of the <i>Conveyancing Act 1919</i> unless the forestry right is held or granted by the commission.		15 16 17 18 19 20
[3] Section 25F Crown's rights to timber and products on purchase-tenure land		21 22
Insert after section 25F (5) (a):		23
(a1) have been established on land that is the subject of a forestry right within the meaning of section 87A of the <i>Conveyancing Act 1919</i> , or		24 25 26
[4] Section 27 Penalty for unlawfully taking timber, products or forest materials		27 28
Insert “, (a1)” after “paragraph (a)” in section 27 (3) (a) (iv).		29
[5] Section 27 (3) (a) (iva)		30
Insert after section 27 (3) (a) (iv):		31
(iva) in pursuance of and in accordance with a forestry right within the meaning of section 87A of the <i>Conveyancing Act 1919</i> and any restriction on use or covenant imposed under Division 4 of Part 6 of that Act in connection with the forestry right,		32 33 34 35 36

[6] Section 27E Trees planted, established or necessary for certain purposes	1 2
Insert after section 27E (1) (a):	3
(a1) have been established on land that is the subject of a forestry right within the meaning of section 87A of the <i>Conveyancing Act 1919</i> , or	4 5 6
[7] Section 30AA	7
Insert after section 30A:	8
30AA Limitation on royalty	9
Despite any other provision of this Division, the commission is not entitled to a royalty in respect of any timber or products:	10 11
(a) derived from trees that have been established on land that is the subject of a forestry right within the meaning of section 87A of the <i>Conveyancing Act 1919</i> , and	12 13 14
(b) taken in accordance with the forestry right and any restriction on use or covenant imposed in connection with the forestry right,	15 16 17
unless the forestry right is granted by the commission.	18
[8] Section 31 Permits to occupy and use land	19
Insert after section 31 (6):	20
(7) A permit under this section may not be granted in respect of land that is subject to a forestry right (within the meaning of section 87A of the <i>Conveyancing Act 1919</i>) if the permit is for a purpose that is, in the opinion of the commission, inconsistent with:	21 22 23 24
(a) the forestry right, or	25
(b) a restriction on the use of land, or forestry covenant, imposed in connection with the forestry right under Division 4 of Part 6 of the <i>Conveyancing Act 1919</i> .	26 27 28

Schedule 4	Amendment of Aboriginal Land Rights Act 1983 No 42	1
		2
	(Section 3)	3
[1] Section 36 Claims to Crown lands		4
Insert “a forestry right (within the meaning of section 87A of the <i>Conveyancing Act 1919</i>) granted in respect of them or of” before “an easement” in section 36 (11).		5 6 7
[2] Section 36 (12)		8
Omit the subsection. Insert instead:		9
(12) A transfer of lands pursuant to this section is subject to the following:		10 11
(a) any easements affecting the lands immediately before the transfer,		12 13
(b) any condition imposed under subsection (5A),		14
(c) any forestry right within the meaning of section 87A of the <i>Conveyancing Act 1919</i> , and any restriction on use or covenant imposed under Division 4 of Part 6 of that Act in connection with that forestry right, in force in respect of the lands immediately before the transfer.		15 16 17 18 19