

# Forestry Rights Bill

No.

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By Authority, Victorian Government Printer



# LEGISLATIVE ASSEMBLY

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Read 1° 22 November 1995

*(Brought in by Mr Coleman and Mr McGrath (Wimmera))*

## A BILL

to provide for the creation of forest property rights and for other purposes.

### **Forestry Rights Act 1995**

**The Parliament of Victoria enacts as follows:**

**1. *Purpose***

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

**5 2. *Commencement***

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

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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984.**)

**3. Definitions**

In this Act—

**“forest property”** means—

- (a) all parts of trees including any parts below the ground; and 5
- (b) the products of trees whether or not those products have become separated from those trees prior to being harvested;

**“forest property agreement”** means an agreement entered into under section 5 and that complies with section 6; 10

**“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; 15

**“forest property right”** means a right granted by a forest property agreement;

**“owner”** means—

- (a) in relation to land which is under the operation of the **Transfer of Land Act 1958**, the person who is registered or entitled to be registered as proprietor of an estate in fee simple in the land; and 20
- (b) in relation to land which 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; 25

**“trees”** means trees, shrubs, bushes, seedlings, saplings and reshoots, whether alive or dead;

**4. Crown land not covered by this Act** 30

This Act does not apply to Crown land.

**5. Agreement creating forest property right**

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; or

(ii) maintain and harvest—

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.

**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.

### **7. Amendment or termination of agreement**

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. 5

### **8. Application to Registrar of Titles for registration of agreement** 10

- (1) If land to which a forest property agreement relates is land under the **Transfer of Land Act 1958**, the forest property owner may apply to the Registrar of Titles to register that forest property agreement. 15
- (2) An application must include a copy of the forest property agreement.
- (3) The Registrar of Titles must make a recording of the agreement on any relevant folio of the Register.
- (4) If land to which a forest property agreement relates is not under the operation of the **Transfer of Land Act 1958**, the forest property owner may deliver a memorial of the forest property agreement to the office of the Registrar-General. 20
- (5) The Registrar-General must register the memorial in accordance with Part I of the **Property Law Act 1958**. 25

### **9. Effect of registration**

After the registration of a memorial or the making of a recording in the Register— 30

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

- 5 (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.

10. *Termination or amendment of the registration*

- 10 (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.
- 15 (2) The Registrar of Titles must, as appropriate, cancel in whole or in part or alter the recording of the forest property agreement in the Register.
- 20 (3) If the land is not under the operation of the **Transfer of Land Act 1958**, the forest property owner must deliver a memorial of the termination or amendment of the forest property agreement to the office of the Registrar-General within 21 days of that termination or amendment.
- 25 (4) The Registrar-General must register the memorial in accordance with Part I of the **Property Law Act 1958**.

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

- 30 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

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- (c) a right of entry or access to land given under a forest property agreement is deemed not to be a right of way.