



Western Australia

Carbon Rights Act 2003

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Carbon Rights Act 2003

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Western Australia

Carbon Rights Act 2003

An Act to provide for the creation and effect of certain interests in land in relation to the effects of carbon sequestration from, and carbon release to, the atmosphere, and for related matters.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Carbon Rights Act 2003*.

2. Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day fixed by proclamation.
- (2) This Act is not to come into operation before section 64 of the *Transfer of Land Amendment Act 2003* has come into operation.

3. Definitions

In this Act —

affected land, in relation to a carbon right, means the land in respect of which the carbon right is registered;

burdened land, in relation to a carbon covenant, means the land in respect of which the covenant is registered as a burden;

carbon covenant means an interest in land referred to in section 12(1)(a);

carbon covenant form means a form that is lodged under section 11(1);

carbon release means the release into the atmosphere of carbon that has been stored in land or in anything on land;

carbon right means an interest in land referred to in section 6(1)(a);

carbon right form means a form that is lodged under section 5(1);

carbon sequestration means —

- (a) the absorption from the atmosphere of carbon dioxide by land or anything on land; and
- (b) the storage of carbon in land or in anything on land;

Crown land has the same meaning as it has in the *Land Administration Act 1997*;

land has the same meaning as it has in the *Land Administration Act 1997*;

owner, in relation to freehold land, means a person whose name is registered as a proprietor of the freehold land;

registered means registered under the TLA;

Registrar means the Registrar of Titles;

relevant carbon right, in relation to a carbon covenant or a proposed carbon covenant, means the carbon right in relation to which the covenant is, or is to be, entered into;

TLA means the *Transfer of Land Act 1893*.

4. **Crown bound**

This Act binds the Crown in right of the State and, subject to the limits of the legislative power of the State, the Crown in all its other capacities.

Part 2 — Carbon rights

5. Registration of carbon right form to create carbon right

- (1) A person may lodge with the Registrar, for registration, a form for the creation of a carbon right in respect of freehold land or Crown land.
- (2) A carbon right form cannot be registered unless —
 - (a) it is in a form approved by the Registrar;
 - (b) it contains a statement that it is for the creation of a carbon right under this Act;
 - (c) it contains the land description for the freehold or Crown land in respect of which the proposed carbon right is to be created;
 - (d) it identifies, if the proposed carbon right is to be in respect of part only of the land referred to in paragraph (c), by way of words or a sketch, the part of the land that is the subject of the proposed carbon right;
 - (e) it specifies the term of the proposed carbon right, which can be in perpetuity; and
 - (f) there is compliance with section 104B of the TLA.

6. Interest in land (carbon right) created on registration of carbon right form

- (1) When a carbon right form is registered —
 - (a) the carbon right that is the subject of the form is created and becomes a separate interest in the land in respect of which the form is registered; and
 - (b) the proprietor of the carbon right is each person who is registered as a proprietor of that interest.
- (2) A carbon right has effect even if it has the same proprietor as the affected land.
- (3) A carbon right is, in relation to the affected land —

- (a) a hereditament; and
- (b) an encumbrance.

Note:

The definition of “land” in the TLA includes hereditaments in freehold and Crown land.

7. Limits on creation of carbon rights

- (1) A carbon right cannot be created in any way other than under this Part.
- (2) No more than one carbon right form can be registered at any particular time in respect of the same area of land.

8. Carbon rights: consequences of ownership and other legal effects

- (1) A proprietor of a carbon right has the legal and commercial benefits and risks arising from changes to the atmosphere that are caused by carbon sequestration and carbon release occurring in or on land in respect of which the carbon right is registered.
- (2) A carbon right —
 - (a) does not confer any right of possession; and
 - (b) is not a subdivision of land to which section 135 of the *Planning and Development Act 2005* applies.

[Section 8 amended: No. 38 of 2005 s. 15.]

9. Dealings in carbon rights

- (1) A carbon right can be —
 - (a) dealt with as a separate interest in land, except that it cannot be varied;
 - (b) the subject of a caveat or process of execution.
- (2) The operation of subsection (1) is subject to —
 - (a) Part IV Division 2A of the TLA; and

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- (b) any provision of the TLA that applies by virtue of a carbon right being —
 - (i) a separate interest in land;
 - (ii) land within the meaning of the TLA;
 - (iii) an encumbrance; or
 - (iv) otherwise referred to in that provision.

Part 3 — Carbon covenants

10. Entering into carbon covenants

- (1) The proprietor of a carbon right may, in relation to any matter that affects or might affect carbon sequestration or carbon release occurring in relation to the affected land, enter into a covenant with one or more persons who have an interest in land.
- (2) The covenant can be for a right, obligation (which can include a positive covenant) or restriction in relation to land.
- (3) The persons' interests in land referred to in subsection (1) need not be in respect of the same land.

11. Registration of carbon covenant form to create carbon covenant

- (1) A person may lodge with the Registrar, for registration, a form for the creation of a carbon covenant.
- (2) A carbon covenant form cannot be registered unless —
 - (a) it is in a form approved by the Registrar;
 - (b) it contains a statement that it is for the creation of a carbon covenant under this Act;
 - (c) it contains a description of the carbon right in relation to which the proposed carbon covenant is to be created;
 - (d) it contains the land description for the land to be burdened by the proposed carbon covenant;
 - (e) it identifies, if the proposed carbon covenant is to be in respect of part only of the land referred to in paragraph (d), by way of words or a sketch, the part of the land that is the subject of the proposed carbon covenant;
 - (f) it contains the terms of the right, obligation or restriction that is the subject of the proposed carbon covenant;

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- (g) the proprietor of the proposed carbon covenant will be the proprietor of the relevant carbon right;
- (h) it specifies —
 - (i) the day on which the proposed carbon covenant is to commence, which cannot be before the day the relevant carbon right is created; and
 - (ii) the term of the proposed carbon covenant, which cannot be longer than the term of the relevant carbon right;
- (i) it contains such other information as is prescribed by the regulations; and
- (j) there is compliance with section 104G of the TLA.

12. Interest in land (carbon covenant) created on registration of carbon covenant form

- (1) When a carbon covenant form is registered —
 - (a) the carbon covenant that is the subject of the form is created and becomes a separate interest in the relevant carbon right; and
 - (b) the proprietor of the carbon covenant is each person who is registered as the proprietor of the relevant carbon right.
- (2) A carbon covenant has effect even if it has the same proprietor as the burdened land.
- (3) Except to the extent that it otherwise provides, a carbon covenant —
 - (a) benefits, attaches to, and runs with, the relevant carbon right; and
 - (b) burdens, attaches to, and runs with, the burdened land.
- (4) A carbon covenant —
 - (a) in relation to the relevant carbon right, is a hereditament; and

- (b) in relation to the burdened land, is an encumbrance.

Note:

The definition of "land" in the TLA includes hereditaments in freehold and Crown land.

13. Limits on creation of carbon covenants

A carbon covenant cannot be created in any way other than under this Part.

14. Dealings in carbon covenants

- (1) Subject to subsection (2), a carbon covenant can be —
 - (a) dealt with as a separate interest in the relevant carbon right;
 - (b) the subject of a caveat or process of execution.
- (2) The proprietor of a carbon covenant must at all times be the proprietor of the relevant carbon right.
- (3) The operation of subsection (1) is subject to —
 - (a) Part IV Division 2A of the TLA; and
 - (b) any provision of the TLA that applies by virtue of a carbon covenant being —
 - (i) a separate interest in land;
 - (ii) land within the meaning of the TLA;
 - (iii) an encumbrance; or
 - (iv) otherwise referred to in that provision.

15. Carbon covenants: other legal effects

A carbon covenant —

- (a) cannot confer any right of possession;
- (b) can grant a licence to enter to inspect or remedy a default;

- (c) is not a licence to use or occupy land or a subdivision of land to which section 135 of the *Planning and Development Act 2005* applies.

[Section 15 amended: No. 38 of 2005 s. 15.]

16. Registration of surrender of carbon covenants: effect

- (1) When a surrender of the whole of a carbon covenant is registered, all rights, obligations and restrictions under the covenant cease to have effect, except to the extent that the covenant provides otherwise.
- (2) When a surrender of part of a carbon covenant is registered, all rights, obligations and restrictions under the covenant cease to have effect in respect of the surrendered part, except to the extent that the covenant provides otherwise.

Part 4 — Miscellaneous

17. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act.
- (2) Without limiting subsection (1) regulations may, for the purposes of State, national or international reporting requirements in relation to carbon sequestration or carbon release, require a proprietor of a carbon right to provide to the Minister or such other person or body specified in the regulations, information about —
 - (a) the area of the affected land;
 - (b) the quantity and form of carbon sequestered or released by the affected land or anything on the affected land; and
 - (c) such other matters as are relevant to carbon sequestration or carbon release occurring in relation to the affected land.
- (3) Regulations made under this Act may provide that contravention of a regulation or a provision of a regulation constitutes an offence and provide for penalties not exceeding \$5 000.

Notes

¹ This is a compilation of the *Carbon Rights Act 2003* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

| Short title | Number and year | Assent | Commencement |
|--|------------------------|---------------|--|
| <i>Carbon Rights Act 2003</i> | 38 of 2003 | 30 Jun 2003 | 24 Mar 2004 (see s. 2 and <i>Gazette</i> 23 Mar 2004 p. 975) |
| <i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i> | 38 of 2005 | 12 Dec 2005 | 9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078) |

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

| Defined term | Provision(s) |
|-----------------------------|---------------------|
| affected land..... | 3 |
| burdened land..... | 3 |
| carbon covenant | 3 |
| carbon covenant form | 3 |
| carbon release | 3 |
| carbon right | 3 |
| carbon right form | 3 |
| carbon sequestration | 3 |
| Crown land..... | 3 |
| land | 3 |
| owner | 3 |
| registered..... | 3 |
| Registrar..... | 3 |
| relevant carbon right | 3 |
| TLA | 3 |