

# **FORESTRY AND LAND TITLE AMENDMENT BILL 2001**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Policy objectives of the Bill**

The Bill proposes to amend the *Forestry Act 1959* and the *Land Title Act 1994*.

The legislative amendments seeks to clarify legal ownership and property rights of land owners and other parties in carbon, absorbed or stored by trees and other vegetation on freehold land in Queensland.

#### **Why the Proposed Legislation is Necessary**

The Kyoto Protocol to the United Nations Framework Convention on Climate Change, to which Australia is a signatory, envisages an emissions trading scheme that incorporates carbon credit trading for offsetting emissions. This has initiated significant global interest in forestry plantations to potentially generate carbon credits from carbon sequestered in timber plantations, forests and other vegetation.

Even though the Commonwealth recognises the benefits that may be gained from the economic value of Australia's forests, it has indicated that legislative recognition of rights to carbon commodities is the responsibility of State and Territory authorities.

International investors continue to investigate the commercial viability of plantation investments in Queensland and opportunities to generate carbon sequestration conditional on a legislative mechanism to recognise ownership of rights. It is understood that some investors may be awaiting passage of legislation to recognise property rights in carbon, prior to investing. Investments have occurred involving the separation and transfer of rights to carbon in New South Wales and also in Queensland between the Queensland Department of Primary Industries (Forestry) and Greenfield Resource Options (GRO). Heightened investor interest indicates that action should be taken to position Queensland to take full

advantage of forestry investment in the event that a possible emissions trading scheme is established.

The *Forestry and Land Title Amendment Bill 2001* principally defines natural resource products, carbon stored and sequestered by trees and vegetation. It permits landowners and other interested parties to enter in to contracts about the ownership, use and economic benefits of natural resource products (which includes carbon commodities, trees and vegetation) on freehold land in Queensland. The contracts may include a common law mechanism (“profit a prendre”) enabling separation of ownership and/or interests in the natural resource product and subsequent registration on the indefeasible land title as per the *Land Title Act 1994*.

### **Estimated cost of implementation to Government**

It is understood that there is no cost of implementation to government in these amendments.

### **Consistency with Fundamental Legislative Principles**

There are no fundamental legislative principle issues arising from the Bill. The amendments are enabling and do not restrict a landowner’s ability to deal with property in any way. Similarly, the legislation does not impose burdens on any parties to a natural resource product agreement.

### **Consultation**

Extensive consultation with industry and other interest groups has been undertaken throughout the process of developing the Authority to Prepare, drafting instructions and the Bill with positive results obtained on both occasions. Additional consultation was conducted on the Bill with officers from the Departments of State Development, Natural Resources and Primary Industries meeting with many representatives of organizations individually or with representatives from related industries.

The periods of consultation extended from mid 2000 until early 2001.

## **PART 1—PRELIMINARY**

*Clause 1* provides the short title of the Bill—“*The Forestry and Land Title Amendment Bill 2001*”.

*Clause 2* provides for the commencement by proclamation of the Act.

## **PART 2—AMENDMENT OF *FORESTRY ACT 1959***

*Clause 3* provides for the Part and the schedule to amend the *Forestry Act 1959*.

*Clause 4* inserts a new Part 6B—section 61J.

The section allows the owner of freehold land to enter into a contract with another person about natural resource products located on the owner’s land and for that contract to be registered as a profit a prendre on the land title pertaining to the property.

Natural resource product is a collective term for carbon, absorbed or stored by trees and other vegetation on freehold land. This term including the process and product of carbon sequestration is defined in subsection 7.

The contractual agreement will enable parties to obtain partial or absolute control over natural resource products of trees on the land. This is to allow a person other than the owner to have access to, manage, harvest or otherwise deal with the natural resource products of the trees or vegetation on the property.

The right of partial or absolute control of the trees occurs by way of vesting ownership, use or economic benefits to another party. Importantly, vesting to another party does not create an interest in the land itself. The intention of this is to separate the ownership of the land and the rights intrinsic to the property from the contractual rights of a person in respect to natural resource products.

To ensure that the contractual rights are recognised and capable of being ascertained by any potential buyer, the contract may be registered as a profit a prendre.

Registration will allow the principles of indefeasibility under the *Land Title Act 1994* to apply.

There is of course no obligation to register the contract as a profit a prendre under the *Land Title Act 1994*. In fact, a contract may be entered into by the parties outside of these provision, however, the contract would not have the benefit of the government backed indefeasibility of title obtained by registration under that Act.

*Clause 5* names the Act to be amended.

*Clause 6* inserts into the Dictionary of the *Land Title Act 1994* the definition of a profit a prendre under the *Forestry Act 1959*.

*The Schedule* to the Act makes a number of minor amendments to the Forestry Act.

The amendments change:

- (1) incorrect references to particular sections in other Acts;
- (2) the title to other Acts referred to in this Act;
- (3) section references where the section has been renumbered;
- (4) other minor grammatical errors.