

Climate Change Act 2010

The *Climate Change Act 2010* (the Act) received royal assent on 14 September 2010. Among other things, the Act establishes a new framework for property rights and management agreements regarding vegetation, carbon in vegetation and soil carbon.

Part 4 concerns Torrens land and comes into operation on Friday 1 July 2011.

Land Victoria has prepared this Customer Information Bulletin to assist customers with the introduction of the Act. In addition, the Registrar has approved five forms to accompany the introduction of the Act. Links to these forms are provided in this bulletin.

The Registrar may register a 'forest carbon right' against a folio. The Registrar may also record a 'Forestry and Carbon Management Agreement' against a folio. These terms are discussed below.

Forest Carbon Rights

A forest carbon right is the generic term for any one of three types of rights that may be created under the Act. A forest carbon right may be:

- a carbon sequestration right (the right to the economic benefits associated with carbon sequestration);
- a forestry right (the right to establish and manage vegetation on land); or
- a soil carbon right (the right to the economic benefits of carbon sequestered underground).

No more than one of each type of forest carbon right may be created in respect of particular land. For example, it is not possible to create a second carbon sequestration right in respect of land over which there is already registered an existing carbon sequestration right.

Importantly, the Act states that, once created, a forest carbon right is an interest in land.

A forest carbon right is created by the execution of an instrument of transfer of the right by the registered proprietor of the freehold or leasehold estate. A 'Creation of Forest Carbon Right' form has been approved for this purpose.

If the forest carbon right affects part of a folio, the subject land must be fixed relative to the title boundaries.

Where a forest carbon right is created by the registered proprietor of the freehold, the consent of any registered lessee is required.

There are transitional provisions addressing forest property agreements recorded under the *Forestry Rights Act 1996*. The *Forestry Rights Act 1996* will be repealed on 1 July 2011. A forest property agreement must first be removed from a folio before a forest carbon right can be registered.

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Once the forest carbon right has been registered, it may be dealt with in the same way as any other proprietary right under the *Transfer of Land Act 1958*. In addition, it may be transferred for a limited term. A forest carbon right may be:

- transferred either in full or for a term of not less than three years;
- mortgaged; and
- surrendered (that is, transferred to the original grantee).

There has been a consequential amendment to the *Sale of Land Act 1962* to confirm that an agreement to transfer a forest carbon right is not a contract of sale of land for the purposes of section 32 of that Act. In other words, there is no requirement to prepare a vendor's statement for the sale of a forest carbon right.

A 'Transfer of Forest Carbon Right' form has been created for the purpose of transferring a forest carbon right. In all other cases, existing forms apply. Equally, existing fees apply – in other words, the fee to register a mortgage of a forest carbon right is the same as the fee to register a mortgage of the freehold estate.

A Certificate of Title must accompany the lodgement of any dealings relating to a forest carbon right.

Forestry and Carbon Management Agreements

The Act also provides for Forestry and Carbon Management Agreements (FCM Agreements) to be recorded against a folio. An 'Application for recording a Forestry and Carbon Management Agreement' form has been approved for this purpose.

An FCM Agreement is not an interest in land.

If an FCM Agreement affects part of a folio, the subject land must be fixed relative to the title boundaries.

Only one FCM Agreement may be recorded in respect of particular land. The recording of an existing FCM Agreement must first be removed before a new FCM agreement may be recorded in respect of the same area of land.

As stated, there are transitional provisions addressing forest property agreements recorded under the *Forestry Rights Act 1996*. A forest property agreement must first be removed from a folio before an FCM Agreement may be recorded.

The parties to an FCM Agreement will include the registered proprietor of the freehold or leasehold estate in the subject land and the registered proprietor of the forest carbon right (if any).

An FCM Agreement comes into effect on either the date that it is executed or any later date specified in the FCM Agreement.

The purpose of an FCM Agreement is to provide for the imposition of management obligations in relation to carbon sequestration or the management of vegetation on that land. These obligations may be positive or negative and, on recording, run with the land.

An FCM Agreement is required to include certain management obligations relating to the harvesting of vegetation.

Before an FCM Agreement may be recorded, an Australian legal practitioner is required to certify that the requirements of Division 3 of Part 4 and Schedule 2 of the Act have been complied with. A panel on the application form provides space for this certification.

An FCM Agreement may be recorded, varied and removed from the Register. In addition to the application to record

form, the Registrar has also approved forms for an application to vary an FCM Agreement and an application to remove an FCM Agreement. These forms include similar requirements to the application to record an FCM Agreement. The miscellaneous fee applies to the lodgement of each application.

A copy of the FCM Agreement or variation of the FCM Agreement must accompany, as relevant, the lodgement of an application to record or vary an FCM Agreement.

An application to record, vary or remove an FCM Agreement must be made by the registered proprietor of a relevant interest. The applicant may be the proprietor of the freehold estate, the proprietor of the leasehold estate or the proprietor of a forest carbon right. A panel on each form requires the class of applicant to be identified.

An application to vary an FCM Agreement must not:

- transfer or assign a forest carbon right;
- vary a forest carbon right;
- vary the end date of the FCM Agreement;
- vary the land affected by the FCM Agreement; or
- vary the parties to the FCM Agreement.

A fresh FCM Agreement is required to vary the term, affected land or parties to an FCM Agreement.

An FCM Agreement ends either on a date specified in the FCM Agreement or by agreement between the persons bound by the FCM Agreement. An FCM Agreement may be ended either wholly or in relation to a particular area of land.

Forms

The Registrar has approved five forms to accompany the introduction of the *Climate Change Act 2010*.

These are available at:

www.dse.vic.gov.au > Property, Titles & Maps > Land Titles > Forms, guides and fees.

The forms are:

Creation of Forest Carbon Right form

Transfer of Forest Carbon Right form

Application for recording a Forestry and Carbon Management Agreement form

Application for varying a Forestry and Carbon Management Agreement form

Application for removing a Forestry and Carbon Management Agreement form

ENCUMBRANCES, CAVEATS AND NOTICES	
FOREST CARBON RIGHT AH123456A	01/07/2011
TRANSFER OF FOREST CARBON RIGHT AJ654321K	01/08/2011
MORTGAGE COMMONWEALTH BANK OF AUSTRALIA	AJ654322L 01/08/2011
AGREEMENT AK987654P	Section 32(1) Climate Change Act 2010 01/09/2011
VARIATION OF AGREEMENT AL345678T	01/10/2011

Example of way in which registration and recording will appear on the Register search statement

Further information

If you require further information about the introduction of the *Climate Change Act 2010* please contact the Department of Sustainability and Environment on 136 186. DSE will support the implementation of selected elements of the *Climate Change Act 2010*.

Further information is available at the DSE website: <http://www.dse.vic.gov.au/conservation-and-environment/climate-change>

If you have any queries about this customer information bulletin or forms published by Land Victoria, please contact Land Victoria Customer Service on (03) 8636 2010.