TPA-01 Tree Plantation Agreements

Version 1 - 24/10/2017

The information provided in this guide is not intended to amount to legal advice. Professional assistance may be required to determine the most appropriate action to protect your legal rights. Please read our Terms of Use on the Land Titles Registration policy and procedure guides web page. Landgate accepts no responsibility where parties print this guide and seek to rely on information that is out of date.

1 Overview

A Tree Plantation Agreement is an agreement that allows a person to establish, maintain and / or harvest a tree plantation. The proprietor of the plantation interest owns the trees separate from the land.

This means that investors can enter into written agreements with landholders and be assured that they have the right to plant, manage and harvest trees and their products with more confidence. They can invest in tree planting on land, without the expense of also having to buy the land, or worry about managing surrounding land.

A Tree Plantation Agreement fills the gap between Timber Share-farming Agreements under the Conservation and Land Management Act 1984 and Profits a’ Prendre at common law.

2 Tree Plantation Agreements Act 2003

The Tree Plantation Agreements Act 2003 creates a statutory interest in land (a Plantation Interest) that is created by an agreement known as a Tree Plantation Agreement. It enables a tree plantation agreement to be registered on the certificate of title to land.

The legislation provides a secure form of share-farming specifically for planted trees. Agreements can apply both trees already in the ground or yet to be planted. It does not apply to other vegetation such as native forests or bush.

3 Creation of a Plantation Interest

A plantation interest in land is created when a tree plantation agreement, in a form approved by the Registrar of Titles, is registered under the TLA in favour of a legal entity who agrees to:
- Establish a plantation
- Maintain a plantation

or

- Harvest products from a plantation.

- A Tree Plantation Agreement form has been created for this purpose and can be downloaded from the Landgate website in Quick Links/ Forms and Fees/ Freehold Land Registration Forms.

A plantation interest in land may be created in relation to:

- freehold land
- a lease of freehold land

or

- a lease of Crown land.

Note: A tree plantation agreement can give a right of exclusive possession.

4 Registration of a Tree Plantation Agreement

4.1 Lodging a TP1

To create a plantation interest in land, a Tree Plantation Agreement form must be lodged for registration at Landgate upon payment of the prescribed registration fee.

No stamp duty is payable on the creation of a tree plantation agreement, but any subsequent transfers or other dealing will be subject to stamp duty in the normal way.

A tree plantation agreement must state the term of the agreement and the day on which it commences. The term must be limited (i.e. it cannot be in perpetuity).

The duplicate title (if any) must be produced with the document.

Note: It is possible for the holder of a tree plantation agreement to lodge a caveat prior to its registration.

4.2 Creating a deposited plan (if required)

If the land the subject of the tree plantation agreement is only part of the land contained in the certificate of title, a Deposited Plan having as the purpose Interest Only may need to be prepared and lodged by a licensed surveyor.

4.3 Consents

A tree plantation agreement will not be registered unless it has the written consent of each person who has a registered interest in the land the subject of the agreement. If the agreement is
entered into by a lessee of freehold land or Crown land, the written consent of each person who has a registered interest in the land subject to the lease is required.

Note: If the agreement is in respect of Crown land, it shall not be registered unless there is compliance with s.18 of the LAA.

4.4 Additional comments

A tree plantation agreement will be endorsed in the second schedule of the title as a SMR Primary Interest in the land. Where the plantation interest is over a lessee's interest in freehold or Crown land it will be shown as a SMR Subsidiary Interest in the land.

A plantation interest is a registered interest in land. It can be dealt with in ways similar to other interests in land. It can be extended, varied, transferred, mortgaged or surrendered (see TPA-02 below). It can also be devised under a Will and be the subject of a Property (Seizure and Sale) Order.

5 Also See

- TPA-02 Tree Plantation Agreements - amendments and removal