



Australian Capital Territory

Tree Protection (Interim Scheme) Act 2001 (repealed)

A2001-20

Republication No 6

Effective: 29 March 2006

Republication date: 29 March 2006

As repealed by A2005-51 s 117

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Tree Protection (Interim Scheme) Act 2001* (repealed) (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)). It also includes any commencement, amendment, repeal or expiry affecting the republished law to 29 March 2006.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Tree Protection (Interim Scheme) Act 2001 (repealed)

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
3	Dictionary 2
4	Notes 2
5	Cases where Act does not apply 2
Part 2	Protection of significant trees
6	Significant trees 4
7	Significant trees declared by regulations 4
8	Meaning of <i>damage</i> to significant tree 4
9	Protection zone 5
10	Damaging significant trees prohibited 5

R6
29/03/06

Tree Protection (Interim Scheme) Act 2001 (repealed)
Effective: 29/03/06

contents 1

Contents

	Page
11 Notice of damage caused in urgent circumstances	5
Part 3	
Approved activities	
12 Criteria for approval	7
13 Application for approval	7
14 Further information	7
15 Approval by conservator	7
16 Notice of approval etc	8
17 Period of approval	8
18 Register of approved activities	8
19 Cancellation of approval	9
20 Inspection of register	10
Part 4	
Adviser to conservator	
21 Appointment of adviser	11
22 Period of appointment etc	11
23 Ending appointment	11
24 Disclosure of interests	12
Part 5	
Enforcement	
Division 5.1	
General	
25 Definitions for pt 5	13
Division 5.2	
Authorised persons	
27 Appointment of authorised persons	13
28 Identity cards	14
Division 5.3	
Powers of authorised persons	
29 Power to enter premises	15
30 Production of identity card	15
31 Consent to entry	15
32 Warrants	16
33 Warrants—application made other than in person	17
34 General powers on entry to premises	19
35 Power to require name and address	19
36 Power to seize evidence	20

	Page
37 Receipt for things seized	21
38 Access to things seized	21
39 Return of things seized	21
Division 5.4 Miscellaneous	
40 Selfincrimination etc	22
45 Damage etc to be minimised	23
46 Compensation	23
Part 6 Review of decisions	
47 Reviewable decisions	24
Part 7 Miscellaneous	
48 Determination of fees	25
49 Approved forms	25
50 Delegation of conservator's functions	25
51 Regulation-making power	26
Dictionary	27
Endnotes	
1 About the endnotes	29
2 Abbreviation key	29
3 Legislation history	30
4 Amendment history	31
5 Earlier republications	32



Australian Capital Territory

Tree Protection (Interim Scheme) Act 2001 (repealed)

An Act for the interim protection of significant trees, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Tree Protection (Interim Scheme) Act 2001*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition ‘*significant tree*—see section 6 (Significant trees).’ means that the expression ‘significant tree’ is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

5 Cases where Act does not apply

This Act does not apply to—

- (a) the removal of a tree in accordance with a development approval under the *Land (Planning and Environment) Act 1991*, division 6.2 (Approvals), if the application for the development approval was made before the commencement of this Act; or

- (b) the removal of a tree in accordance with a condition of the lease where the tree is located, if the condition was in force immediately before the commencement of this Act; or
- (c) a tree that is a pest plant under the *Land (Planning and Environment) Act 1991*.

Part 2 Protection of significant trees

6 Significant trees

- (1) For this Act, a tree is a *significant tree* if it is on leased land and—
 - (a) is 12m or more high; or
 - (b) has a trunk with a circumference of 1.5m or more, 1m above natural ground level; or
 - (c) has 2 or more trunks and the total circumference of all the trunks, 1m above natural ground level, is 1.5m or more; or
 - (d) has a canopy 12m or more wide.

- (2) In this section:

leased land means leased Territory land, other than land leased for rural purposes, or purposes including rural purposes.

7 Significant trees declared by regulations

The regulations may declare a tree to be a significant tree.

8 Meaning of *damage to significant tree*

- (1) In this Act:

damage, to a significant tree, means any of the following activities:

- (a) killing or destroying the tree;
- (b) removing the tree;
- (c) lopping or topping the tree within the meaning of AS 4373;
- (d) any ground work in the protection zone for the tree that adversely affects the health of the tree;
- (e) any other activity prescribed under the regulations.

(2) In this section:

ground work means any of the following:

- (a) contaminating the soil;
- (b) compacting the soil or changing the natural ground level;
- (c) digging a trench;
- (d) building or construction work.

9 Protection zone

The *protection zone* for a significant tree is the area under the canopy of the tree and the 2m wide area surrounding the vertical projection of the canopy.

10 Damaging significant trees prohibited

(1) A person must not do anything that damages, or is likely to damage, a significant tree except in accordance with an approval under section 15 (Approval by conservator).

Maximum penalty: 100 penalty units.

(2) Subsection (1) does not apply to the following:

- (a) maintenance pruning done in accordance with AS 4373 that does not adversely affect the general appearance of the tree;
- (b) damage caused in urgent circumstances by an act or omission that was necessary to protect the health or safety of people or animals, or public or private property.

11 Notice of damage caused in urgent circumstances

(1) If a significant tree is damaged because of an act or omission of a person in the urgent circumstances mentioned in section 10 (2) (b), the person must give the conservator written notice of the damage within 21 days after the day it happened.

Maximum penalty: 10 penalty units.

- (2) The notice must indicate the following:
- (a) the land where the tree was damaged and the location of the tree on the land;
 - (b) the nature of the damage;
 - (c) the circumstances of the urgency.

Part 3 Approved activities

12 Criteria for approval

- (1) The Minister may, in writing, determine criteria for approving an activity that would damage, or is likely to damage, a significant tree.
- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

13 Application for approval

A person may apply in writing to the conservator for approval for an activity that would damage, or is likely to damage, a significant tree.

Note 1 A fee may be determined under s 48 (Determination of fees) for this section.

Note 2 If a form is approved under s 51 (Approved forms) for this section, the form must be used.

14 Further information

- (1) The conservator may, by written notice given to an applicant, require the applicant to give the conservator further stated information or a document that the conservator reasonably needs to consider the application.
- (2) If the applicant fails to comply with a requirement under subsection (1), the conservator may refuse to consider the application further.

15 Approval by conservator

- (1) The conservator may, in writing, approve an activity to which an application relates only if satisfied on reasonable grounds that the

activity satisfies the relevant criteria for approval determined under section 12 (Criteria for approval).

- (2) However, the conservator must ask the adviser for a report in relation to the application.
- (3) In making a decision on the application, the conservator must have regard to any report by the adviser in relation to the application.
- (4) An approval is subject to the conditions (if any) stated in the approval.

16 Notice of approval etc

- (1) The conservator must give written notice of the decision on an application to—
 - (a) the applicant; and
 - (b) if the applicant is not the lessee of the land where the tree is located—the lessee; and
 - (c) the lessee of each lease that adjoins the lease where the tree is located.
- (2) An approval takes effect on the date (at least 28 days after the day the notice is given to the applicant) stated in the notice.
- (3) A notice under this section must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

17 Period of approval

Unless cancelled sooner, an approval is in force for the period (of at least 1 year) stated in the approval.

18 Register of approved activities

- (1) The conservator must keep a register of approved activities.

- (2) For each approval, the conservator must enter the following particulars in the register:
 - (a) the name and address of the applicant;
 - (b) the location of the tree to which the approval relates;
 - (c) a description of the tree;
 - (d) the activity approved;
 - (e) any conditions to which the approval is subject;
 - (f) the period of the approval.
- (3) The conservator may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.

19 Cancellation of approval

- (1) The conservator may, in writing, cancel an approval if satisfied on reasonable grounds that the activity approved no longer satisfies the relevant criteria for approval determined under section 12 (Criteria for approval).
- (2) The conservator must give written notice of the cancellation to—
 - (a) the applicant for the approval; and
 - (b) if that person is not the lessee of the land where the tree is located—the lessee; and
 - (c) the lessee of each lease that adjoins the lease where the tree is located.
- (3) A cancellation takes effect—
 - (a) on the day the notice is given to the applicant for the approval;
or
 - (b) if a later date of effect is stated in the notice—on that date.

- (4) A notice under this section must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

20 Inspection of register

- (1) A person may, without charge, inspect the register during ordinary office hours at the office of the conservator.
- (2) A person may, on payment of reasonable copying costs, obtain a copy of all or part of the register.

Part 4 Adviser to conservator

21 Appointment of adviser

- (1) The Minister must appoint a person (the *adviser*) to advise the conservator about the exercise of functions under part 3.

Note For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

- (2) The adviser must be a person who, in the Minister's opinion, has extensive experience in 2 or more of the areas of arboriculture, natural and cultural heritage or landscape architecture.
- (3) A public servant is not eligible to be the adviser.

22 Period of appointment etc

- (1) The adviser must be appointed for a term of not longer than 1 year.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 and dict, pt 1, def of *appoint*).

- (2) The adviser holds the position on conditions not provided by this Act or another Territory law that are decided by the Minister.

23 Ending appointment

The Minister may, by written notice to the adviser, end the adviser's appointment—

- (a) for misbehaviour or physical or mental incapacity; or
- (b) for contravening section 24 (Disclosure of interests).

Note An appointment also ends if the adviser resigns (see *Legislation Act 2001*, s 210).

24 Disclosure of interests

- (1) This section applies if—
 - (a) the adviser has a direct or indirect financial interest in an application in relation to which the adviser has been asked to report to the conservator; and
 - (b) the interest could conflict with the proper exercise of the adviser's functions in relation to the report.
- (2) As soon as practicable after the relevant facts come to the adviser's knowledge, the adviser must disclose the nature of the interest to the conservator.
- (3) If subsection (2) applies in relation to an application—
 - (a) the adviser must not report, or report further, to the conservator in relation to the application, unless the conservator directs otherwise; and
 - (b) the Minister must, on request by the conservator, appoint a person to act as adviser in relation to the application.
- (4) Subsection (3) (b) does not limit the *Legislation Act 2001*, part 18.3 (Appointments).
- (5) Within 14 days after the end of each financial year, the conservator must give the Minister a statement of any disclosure of interest made under this section, and any direction given by the conservator, during the financial year.

Part 5 **Enforcement**

Division 5.1 **General**

25 **Definitions for pt 5**

In this part:

connected—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

Note The dictionary defines *premises* as including land.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

Division 5.2 **Authorised persons**

27 **Appointment of authorised persons**

- (1) The chief executive may appoint a person to be an authorised person for this Act or a provision of this Act.

Note 1 For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) A person must not be appointed as an authorised person unless—
- (a) the person is an Australian citizen or a permanent resident of Australia; and
 - (b) the chief executive has certified in writing that, after appropriate inquiry, the chief executive is satisfied on reasonable grounds that the person is suitable for appointment, having regard in particular to—
 - (i) whether the person has any criminal convictions; and
 - (ii) the person's employment record; and
 - (c) the chief executive has certified in writing that the person has satisfactorily completed adequate training to exercise the powers of an authorised person proposed to be given to the person.

28 Identity cards

- (1) The chief executive must issue an authorised person with an identity card that states the person's name and appointment as an authorised person, and shows—
- (a) a recent photograph of the person; and
 - (b) the date of issue of the card; and
 - (c) the date of expiry of the card; and
 - (d) anything else prescribed under the regulations.

- (2) A person must, within 7 days after ceasing to be an authorised person, return the identity card to the chief executive.

Maximum penalty (subsection (2)): 1 penalty unit.

Division 5.3 Powers of authorised persons

29 Power to enter premises

- (1) For this Act, an authorised person may—
- (a) enter any premises at any time with the occupier's consent; or
 - (b) enter premises in accordance with a warrant under this part.
- (2) An authorised person may, without the occupier's consent, enter the land around premises to ask for consent to enter the premises.

30 Production of identity card

An authorised person may not remain on premises entered under this part if, on request by the occupier, the authorised person does not produce his or her identity card.

31 Consent to entry

- (1) When seeking the consent of an occupier for entering premises under this part, an authorised person must—
- (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment—

- (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time, and date, when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must presume that an occupier of premises did not consent to an entry to the premises by an authorised person under this part if—
- (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
 - (b) an acknowledgment under this section is not produced in evidence for the entry; and
 - (c) it is not proved that the occupier consented to the entry.

32 Warrants

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives to the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity (the *evidence*) connected with an offence against this Act; and
 - (b) the evidence is at the premises, or may be at the premises, within the next 14 days.
- (5) The warrant must state—
- (a) that an authorised person may, with necessary help and force, enter the premises and exercise the authorised person’s powers under this part; and
 - (b) the offence for which the warrant is sought; and
 - (c) the evidence that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 14 days after the warrant’s issue, the warrant ends.

33 Warrants—application made other than in person

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of—
- (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.

- (5) If it is not practicable to fax a copy to the authorised person—
- (a) the magistrate must—
 - (i) tell the authorised person what the terms of the warrant are; and
 - (ii) tell the authorised person the date and time the warrant was issued; and
 - (b) the authorised person must complete a form of warrant (**warrant form**) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
- (a) the sworn application; and
 - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must presume that a power exercised by an authorised person was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and

- (c) it is not proved that the exercise of power was authorised by a warrant under this section.

34 General powers on entry to premises

- (1) An authorised person who enters premises under this part may, for this Act, do any of the following in relation to the premises or anything on the premises:
- (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples of or from anything on the premises;
 - (d) take photographs, films, or audio, video or other recordings;
 - (e) subject to section 36 (Power to seize evidence), seize a thing;
 - (f) require the occupier, or a person on the premises, to give the authorised person reasonable help to exercise a power under this part.
- (2) A person must not, without reasonable excuse, contravene a requirement under subsection (1) (f).

Maximum penalty (subsection (2)): 50 penalty units.

35 Power to require name and address

- (1) An authorised person may require a person to state the person's name and address if the authorised person—
- (a) finds a person committing an offence against this Act; or
 - (b) has reasonable grounds for believing that a person has just committed an offence against this Act.
- (2) In exercising a power under subsection (1), an authorised person must—
- (a) tell the person the reasons for the requirement; and

(b) as soon as practicable, record those reasons.

- (3) A person must not, without reasonable excuse, contravene a requirement under subsection (1).

Maximum penalty: 5 penalty units.

- (4) However, a person is not required to comply with a requirement under subsection (1) if, on request by the person, the authorised person does not produce his or her identity card.

36 Power to seize evidence

- (1) An authorised person who enters premises under a warrant under this part may seize the evidence for which the warrant was issued.

- (2) An authorised person who enters premises under this part with the occupier's consent may seize a thing on the premises if—

(a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and

(b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when seeking the occupier's consent.

- (3) An authorised person may also seize anything on premises entered under this part if satisfied on reasonable grounds that—

(a) the thing is connected with an offence against this Act; and

(b) the seizure is necessary to prevent the thing from being—

(i) concealed, lost or destroyed; or

(ii) used to commit, continue or repeat the offence.

- (4) Having seized a thing, an authorised person may—

(a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or

(b) leave the thing at the place of seizure but restrict access to it.

- (5) A person must not, without the chief executive's approval, interfere with a thing to which access has been restricted under subsection (4).

Maximum penalty (subsection (5)): 50 penalty units, imprisonment for 6 months or both.

37 Receipt for things seized

- (1) As soon as practicable after a thing is seized by an authorised person under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously at the place of seizure.

38 Access to things seized

A person who would, apart from the seizure, be entitled to a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

39 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
- (a) a prosecution for an offence relating to the thing is not begun within 90 days after the day of the seizure; or
- (b) the court does not find the offence proved in a prosecution for an offence relating to the thing.
- (2) A thing seized under this part is forfeited to the Territory if a court—

- (a) finds an offence relating to the thing to be proved; and
 - (b) orders the forfeiture.
- (3) If subsection (2) (a) applies, but a court does not order the forfeiture of the thing seized, the chief executive must return the thing to its owner or the Territory must pay reasonable compensation to the owner for the loss of the thing.

Division 5.4 Miscellaneous

40 Selfincrimination etc

- (1) A person is not excused from providing information or producing a document when required to do so under this part on the ground that the information or document may tend to incriminate the person.
- (2) However—
- (a) the provision of the information or document; or
 - (b) any other information, document or thing obtained as a direct or indirect consequence of providing the information or document;
- is not admissible in evidence against the person in a criminal proceeding.
- (3) Subsection (2) does not apply to a proceeding for—
- (a) an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents); or
 - (b) any other offence in relation to the falsity of the information or document.

Note 1 A reference to an offence against a Territory law includes a reference to a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

Note 2 The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

45 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person whom the authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

46 Compensation

- (1) A person may claim reasonable compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person or a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Part 6 Review of decisions

47 Reviewable decisions

- (1) Application may be made to the administrative appeals tribunal for review of the following decisions of the conservator:
 - (a) to give or refuse an approval under section 15 (Approval by conservator);
 - (b) to impose conditions on an approval under section 15;
 - (c) to cancel, or refuse to cancel, an approval under section 19 (Cancellation of approval).
- (2) An application may be made only by—
 - (a) the applicant for the approval; or
 - (b) the lessee of the land where the tree to which the application relates is located; or
 - (c) the lessee of a lease that adjoins the lease where the tree is located.

Part 7 Miscellaneous

48 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

49 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

50 Delegation of conservator's functions

- (1) The conservator may delegate the conservator's functions under this Act to—

- (a) a public employee; or
- (b) an authorised person; or
- (c) a person prescribed under the regulations.

Note For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

- (2) However, the conservator must not delegate the function of approving the killing, destruction or removal of a significant tree.

51 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Dictionary

(see s 3)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- appoint
- contravene
- exercise
- function.

adviser—see section 21 (Appointment of adviser).

approval means an approval under section 15 (Approval by conservator).

AS 4373 means the Australian Standard entitled ‘AS 4373-1996 Pruning of amenity trees’, as in force from time to time.

authorised person means a person who is appointed as an authorised person under section 27 (Appointment of authorised persons).

connected with an offence, for part 5 (Enforcement)—see section 26 (Things connected with offences).

conservator means the conservator of flora and fauna.

damage, to a significant tree—see section 8 (Meaning of ***damage*** to significant tree).

occupier, for part 5 (Enforcement)—see section 25 (Meaning of ***occupier*** for pt 5).

offence, for part 5 (Enforcement)—see section 26 (Things connected with offences).

premises includes land.

protection zone, for a significant tree—see section 9 (Protection zone).

register means the register kept under section 18 (Register of approved activities).

significant tree means—

- (a) a significant tree under section 6 (Significant trees); or
- (b) a significant tree declared by regulations under section 7 (Significant trees declared by regulations).

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Tree Protection (Interim Scheme) Act 2001 No 20

notified 3 April 2001 (Gaz 2001 No S16)
commenced 29 March 2001 (s 2)

as amended by

Legislation Amendment Act 2002 No 11 pt 2.48

notified LR 27 May 2002
s 1, s 2 commenced 27 May 2002 (LA s 75)
pt 2.48 commenced 28 May 2002 (s 2 (1))

Statute Law Amendment Act 2002 No 30 pt 3.83

notified LR 16 September 2002
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
pt 3.83 commenced 17 September 2002

Criminal Code 2002 No 51 pt 1.24

notified LR 20 December 2002
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))
pt 1.24 commenced 1 January 2003 (s 2 (1))

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.93

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 2 pt 2.93 commenced 9 April 2004 (s 2 (1))

as repealed by

Tree Protection Act 2005 A2005-51 s 117

notified LR 29 September 2005
s 1, s 2 commenced 29 September 2005 (LA s 75 (1))
s 117 commenced 29 March 2006 (s 2 and LA s 79)

4 Amendment history

Commencement

s 2 om R1 (LA s 89 (4))

Criteria for approval

s 12 am 2002 No 30 amdt 3.909

Appointment of adviser

s 21 am 2002 No 30 amdts 3.910-3.912

Period of appointment etc

s 22 am 2002 No 30 amdt 3.913

Definitions for pt 5

s 25 sub 2002 No 30 amdt 3.914

Things connected with offences

s 26 om 2002 No 30 amdt 3.914

Appointment of authorised persons

s 27 am 2002 No 30 amdt 3.915, amdt 3.916

Selfincrimination etc

s 40 am 2002 No 11 amdt 2.97; 2002 No 51 amdt 1.24; A2004-15 amdt 2.200

Legal professional privilege

s 41 om 2002 No 11 amdt 2.98

Providing false or misleading information

s 42 om A2004-15 amdt 2.201

Providing false or misleading documents

s 43 om A2004-15 amdt 2.201

Hindering or obstructing authorised person

s 44 om A2004-15 amdt 2.201

Determination of fees

s 48 sub 2002 No 30 amdt 3.917

Approved forms

s 49 orig s 49 om 2002 No 30 amdt 3.917
(prev s 51) am 2002 No 30 amdt 3.918, amdt 3.919
renum LA R3 (see also 2002 No 30 amdt 3.923)

Delegation of conservator's functions

s 50 orig s 50 om 2002 No 30 amdt 3.917
(prev s 52) am 2002 No 30 amdts 3.920-3.922
renum R3 (see also 2002 No 30 amdt 3.923)

Endnotes

5 Earlier republications

Regulation-making power

s 51 orig s 51 renum as s 49
(prev s 53) renum R3 (see also 2002 No 30 amdt 3.923)

Delegation of conservator's functions

s 52 orig s 52 renum as s 50

Regulation-making power

s 53 orig s 53 renum as s 51

Consequential amendment

pt 8 hdg om R1 (LA s 89 (3))

Amendment of Land (Planning and Environment) Act 1991, s 229 (4)

s 54 om R1 (LA s 89 (3))

Dictionary

dict am 2002 No 30 amdt 3.924

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	not amended	9 November 2001
2	Act 2002 No 11	30 May 2002
3	Act 2002 No 30	3 October 2002
4	A2002-51	1 January 2003
5	A2004-15	9 April 2004

© Australian Capital Territory 2006