



Australian Capital Territory

# Tree Protection Act 2005

A2005-51

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Australian Capital Territory

# Tree Protection Act 2005

**A2005-51**

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

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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2003 024B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Tree Protection Act 2005*.

### 2 Commencement

- (1) This Act (other than the prescribed provisions) commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

- (2) The prescribed provisions commence on the later of—
- (a) the day fixed under subsection (1) for the commencement of this Act; and
  - (b) the commencement of the *Utilities Amendment Act 2005*.
- (3) In this section:

***prescribed provisions*** means the following provisions:

- (a) section 19 (1) (d) (i), 3rd and 4th dot points;
- (b) section 19 (1) (d) (iii);
- (c) section 19 (1) (e) (ii);
- (d) schedule 1, items 1.27 to 1.30.



### 3 Objects of Act

- (1) The objects of this Act are—
  - (a) to protect individual trees in the urban area that have exceptional qualities because of their natural and cultural heritage values or their contribution to the urban landscape; and
  - (b) to protect urban forest values that may be at risk because of unnecessary loss or degradation; and
  - (c) to protect urban forest values that contribute to the heritage significance of an area; and
  - (d) to ensure that trees of value are protected during periods of construction activity; and
  - (e) to promote the incorporation of the value of trees and their protection requirements into the design and planning of development; and
  - (f) to promote a broad appreciation of the role of trees in the urban environment and the benefits of good tree management and sound arboricultural practices.

- (2) In this section:

*urban forest* means the trees located in the built-up urban area.

*urban forest values* means the amenity and economic and environmental benefits derived from the urban forest and the associated tree canopy cover.

## 4 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 terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*heritage significance*—see the *Heritage Act 2004*, section 10.’ means that the term ‘heritage significance’ is defined in that section and the definition applies to this Act.

*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, s 155 and s 156 (1)).

## 5 Notes

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

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

## 6 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 7 Application of Act—built-up urban areas

(1) This Act applies to trees on land in built-up urban areas.

- (2) A ***built-up urban area*** is an area of land declared, in writing, by the Minister to be a built-up urban area for this Act.
- (3) A declaration is a notifiable instrument.

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

## Part 2 Important terms

### 8 Protected trees

For this Act, each of the following is a *protected tree*:

- (a) a registered tree;
- (b) a regulated tree.

### 9 Registered trees

A *registered tree* is a tree that is registered (or provisionally registered) under part 7 (Registration of trees).

### 10 Regulated trees and tree management precincts

- (1) A *regulated tree* is a living tree (other than a registered tree or a palm tree) that is on leased land within a tree management precinct 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) However, a tree is not a regulated tree if it is declared to be a pest plant under the Land Act, section 261.
- (3) A *tree management precinct* is an area declared under part 5 to be a tree management precinct.

### 11 Protection zone for protected tree

- (1) The *protection zone* for a protected tree is—

- (a) the area under the canopy of the tree; and
  - (b) the 2m wide area surrounding the vertical projection of the canopy; and
  - (c) the 4m wide area surrounding the trunk as measured at 1m above natural ground level.
- (2) However, if another protection zone is defined in a tree management plan in force for the protected tree, that protection zone is the *protection zone* for the tree.

## Part 3                                  Protection of trees

### Division 3.1                          Definitions

#### 12                                  Meaning of *damage*

In this Act:

*damage* a protected tree includes the following:

- (a) kill or destroy the tree;
- (b) poison the tree;
- (c) ringbark the tree (whether partially or completely);
- (d) fell or remove the tree;
- (e) cut branches or stems of the tree between branch unions (*lopping*);
- (f) remove branches of the tree to a previously pruned or lopped point (*pollarding*);
- (g) major pruning of the tree;
- (h) anything else done to or in relation to the tree that—
  - (i) causes it to die; or
  - (ii) significantly reduces its expected life; or
  - (iii) significantly and adversely affects its health, stability or general appearance.

**13      **Meaning of *major pruning*****

(1) In this Act:

*major pruning* means pruning other than lopping, pollarding or minor pruning.

(2) In this section:

(a) in relation to a registered tree—*minor pruning* means pruning (other than lopping or pollarding) done in accordance with AS 4373 that—

(i) only involves removing deadwood; or

(ii) does not involve removing any limbs that have a diameter greater than 50mm; or

(iii) is the first pruning of the tree in the calendar year, affects less than 10% of the canopy and does not alter the overall shape of the canopy; and

(b) in relation to a regulated tree—*minor pruning* means pruning (other than lopping or pollarding) done in accordance with AS 4373 that—

(i) does not adversely affect the general appearance of the tree; or

(ii) for a fruit tree—is done for fruit production.

**14      **Meaning of *prohibited groundwork*****

In this Act:

*prohibited groundwork*—

(a) in relation to the protection zone for a protected tree—a person does *prohibited groundwork* in the protection zone if the person—

- (i) contaminates the soil in the protection zone with something that is poisonous to trees; or
  - (ii) cuts any of the tree's roots in the protection zone that have a diameter greater than 50mm; or
  - (iii) does either of the following in the protection zone, other than in cultivating the soil for horticultural purposes:
    - (A) excavates to a depth greater than 10cm over an area 4m<sup>2</sup> or larger;
    - (B) raises the soil level by more than 10cm above the natural soil level over an area 4m<sup>2</sup> or larger; or
  - (iv) does anything else prescribed by regulation for this paragraph; and
- (b) in relation to a declared site—a person does *prohibited groundwork* in the declared site if the person—
- (i) does either of the following in the declared site, other than in cultivating the soil for horticultural purposes:
    - (A) excavates to a depth greater than 10cm over an area 4m<sup>2</sup> or larger;
    - (B) raises the soil level by more than 10cm above the natural soil level over an area 4m<sup>2</sup> or larger; or
  - (ii) does anything else prescribed by regulation for this paragraph.

**Examples for par (a) (iii) and (b) (i) of cultivation for horticultural purposes**

- 1 preparing garden beds for planting
- 2 planting trees and shrubs

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).



## **Division 3.2                      Prohibited activities**

### **15                      Damaging protected trees—general**

- (1) A person commits an offence if—
- (a) the person does something that damages a protected tree; and
  - (b) the person is reckless about whether doing the thing would damage the protected tree.

Maximum penalty: 400 penalty units.

- (2) A person commits an offence if the person does something and is reckless about whether doing the thing would damage a protected tree.

Maximum penalty: 200 penalty units.

- (3) A person commits an offence if—
- (a) the person does something that damages a protected tree; and
  - (b) the person is negligent about whether doing the thing would damage the protected tree.

Maximum penalty: 100 penalty units.

### **16                      Damaging protected trees—work done as part of a business**

- (1) This section applies to a person who is doing work as part of a business involved in—
- (a) property development or maintenance; or
  - (b) any other activity in relation to land that may affect trees on the land.

**Examples of activities for par (b)**

tree surgery, building, plumbing, landscaping, installing irrigation, concreting, earthwork, horticulture

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The person commits an offence if—
- (a) the person does something that damages a protected tree; and
  - (b) the person is reckless about whether doing the thing would damage the protected tree.

Maximum penalty: 400 penalty units.

- (3) The person commits an offence if the person does something and is reckless about whether doing the thing would damage a protected tree.

Maximum penalty: 200 penalty units.

- (4) The person commits an offence if—
- (a) the person does something that damages a protected tree; and
  - (b) the person is negligent about whether doing the thing would damage the protected tree.

Maximum penalty: 100 penalty units.

- (5) The person commits an offence if the person does something that damages, or is likely to damage, a protected tree.

Maximum penalty: 50 penalty units.

- (6) For subsections (2), (3) and (4), strict liability applies to the circumstance that the tree is a protected tree.

- (7) An offence against subsection (5) is a strict liability offence.

**17 Doing prohibited groundwork—general**

- (1) A person commits an offence if—
- (a) the person does prohibited groundwork in—
    - (i) the protection zone for a protected tree; or
    - (ii) a declared site; and
  - (b) the person is reckless about whether the groundwork is prohibited groundwork in—
    - (i) the protection zone for a protected tree; or
    - (ii) a declared site.

Maximum penalty: 200 penalty units.

- (2) A person commits an offence if—
- (a) the person does prohibited groundwork in—
    - (i) the protection zone for a protected tree; or
    - (ii) a declared site; and
  - (b) the person is negligent about whether the groundwork is prohibited groundwork in—
    - (i) the protection zone for a protected tree; or
    - (ii) a declared site.

Maximum penalty: 100 penalty units.

- (3) A person commits an offence if the person does prohibited groundwork in—
- (a) the protection zone for a protected tree; or
  - (b) a declared site.

Maximum penalty: 50 penalty units.

**18 Doing prohibited groundwork—work done as part of a business**

- (1) This section applies to a person who is doing work as part of a business involved in—
- (a) property development or maintenance; or
  - (b) any other activity in relation to land that may affect trees on the land.

**Examples of activities for par (b)**

tree surgery, building, plumbing, landscaping, installing irrigation, concreting, earthwork, horticulture

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The person commits an offence if—
- (a) the person does prohibited groundwork in—
    - (i) the protection zone for a protected tree; or
    - (ii) a declared site; and
  - (b) the person is reckless about whether the groundwork is prohibited groundwork in—
    - (i) the protection zone for a protected tree; or
    - (ii) a declared site.

Maximum penalty: 200 penalty units.

- (3) The person commits an offence if—
- (a) the person does prohibited groundwork in—
    - (i) the protection zone for a protected tree; or
    - (ii) a declared site; and

(b) the person is negligent about whether the groundwork is prohibited groundwork in—

- (i) the protection zone for a protected tree; or
- (ii) a declared site.

Maximum penalty: 100 penalty units.

(4) The person commits an offence if the person does prohibited groundwork in—

- (a) the protection zone for a protected tree; or
- (b) a declared site.

Maximum penalty: 50 penalty units.

(5) For subsections (2) and (3), strict liability applies to the circumstances that—

- (a) the tree is a protected tree; and
- (b) the groundwork is done in—
  - (i) the protection zone for the tree; or
  - (ii) a declared site.

(6) An offence against subsection (4) is a strict liability offence.

## **19 Exceptions—tree damaging and prohibited groundwork offences**

(1) Sections 15 to 18 do not apply to—

- (a) an activity approved under section 25 or section 29 that is done in accordance with the conditions (if any) of the approval (whether or not done by the person who applied for the approval); or
- (b) the removal of a tree if the registration of the tree is cancelled under division 7.3 for safety reasons; or

- (c) anything done in accordance with—
- (i) a tree management plan; or
  - (ii) a tree protection direction; or
  - (iii) a condition of a development approval that requires a person to do or not do something in relation to—
    - (A) a protected tree; or
    - (B) the protection zone for a protected tree; or
    - (C) a declared site; or
  - (iv) a direction under the *Plant Diseases Act 2002*, section 13 (Direction for seizure, disinfection, destruction etc of plants etc); or
- (d) anything done in relation to a regulated tree under—
- (i) any of the following provisions of the *Utilities Act 2000*:
    - section 105 (Installation of network facilities);
    - section 106 (Maintenance of network facilities);
    - section 225F (Installation of territory network facilities);
    - section 225G (Maintenance of territory network facilities); or
  - (ii) a network protection notice given under that Act, section 125; or
  - (iii) a territory network protection notice given under that Act, section 225X; or
  - (iv) a notice under the *Roads and Public Places Act 1937*, section 13 (Trees etc overhanging public places); or

- (e) anything done in relation to a registered tree under any of the following provisions of the *Utilities Act 2000* for the purpose of protecting life or property if it is not practicable because of the urgency of the situation to obtain an approval under section 29:
  - (i) section 106 (Maintenance of network facilities); or
  - (ii) section 225G (Maintenance of territory network facilities); or
- (f) anything done honestly by a relevant person in the exercise or purported exercise of a function under the *Emergencies Act 2004* for the purpose of protecting life or property, or controlling, extinguishing or preventing the spread of fire.

(2) In this section:

***development approval*** means an approval in force under the Land Act, part 6 for a development.

***relevant person*** means—

- (a) the chief officer (fire brigade); or
- (b) any other member of the fire brigade; or
- (c) the chief officer (rural fire service); or
- (d) any other member of the rural fire service; or
- (e) anyone else under the control of the chief officer (fire brigade) or the chief officer (rural fire service); or
- (f) a police officer.

## 20 Contravening tree protection conditions of development approval

- (1) This section applies if—
- (a) the conservator gives advice under section 82 in relation to a development; and
  - (b) an approval for the development is in effect under the Land Act, part 6; and
  - (c) the approval is subject to a condition (a *tree protection condition*) requiring a person to do or not do something in relation to—
    - (i) a protected tree; or
    - (ii) the protection zone for a protected tree; or
    - (iii) a declared site.

### **Example of tree protection condition for par (c)**

A condition that the applicant comply with tree protection requirements of a tree management plan.

- (2) A person commits an offence if the person contravenes a tree protection condition of the development approval.

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if—
- (a) the person engages in conduct that contravenes a tree protection condition of the development approval; and
  - (b) the person engages in the conduct in doing work as part of a business involved in—
    - (i) property development or maintenance; or
    - (ii) any other activity in relation to land that may affect trees on the land.

Maximum penalty: 50 penalty units.



**Examples of activities for par (b) (ii)**

tree surgery, building, plumbing, landscaping, installing irrigation, concreting, earthwork, horticulture

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) An offence against subsection (3) is a strict liability offence.
- (5) In this section:

***engage in conduct*** means—

- (a) do an act; or
- (b) omit to do an act.

## **Division 3.3 Approved activities**

### **21 Criteria for approval**

- (1) The Minister may, in writing, determine criteria (the ***approval criteria***) for approving an activity that would or may—
  - (a) damage a protected tree; or
  - (b) be prohibited groundwork in—
    - (i) the protection zone for a protected tree; or
    - (ii) a declared site.
- (2) A determination is a disallowable instrument.

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

### **22 Application for approval of tree damaging etc activity**

A person may apply, in writing, to the conservator for approval for an activity that would or may—

- (a) damage a protected tree; or

- (b) be prohibited groundwork in—
- (i) the protection zone for a protected tree; or
  - (ii) a declared site.

*Note 1* If a form is approved under s 110 for an application, the form must be used.

*Note 2* A fee may be determined under s 109 for an application.

### **23 Further information for approval application**

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

### **24 Advisory panel advice on approval application**

The conservator may ask the advisory panel for advice on the application.

### **25 Decision on approval application**

- (1) Within 30 days after the day the conservator receives the application, the conservator must decide whether to approve the activity to which it relates.
- (2) In working out the 30-day period, any period when a requirement under section 23 (1) was not complied with is disregarded.
- (3) In making a decision on the application, the conservator must have regard to—
  - (a) the approval criteria; and
  - (b) the advice (if any) of the advisory panel; and

- (c) anything else the conservator considers relevant.
- (4) An approval may be given subject to conditions stated in the approval.

## **26 Notice of decision on approval application**

- (1) For an application in relation to a declared site, the conservator must give written notice of the decision on the application to—
  - (a) the applicant; and
  - (b) the lessee of, or land management agency for, the land where the site is located; and
  - (c) the planning and land authority.
- (2) For any other application, the conservator must give written notice of the decision on the application to—
  - (a) the applicant; and
  - (b) the lessee of, or land management agency for, the land where the tree is located; and
  - (c) the lessee of, or land management agency for, the land where the activity is to be undertaken; and
  - (d) the lessee of land that—
    - (i) adjoins the land where the tree is located; and
    - (ii) is within 50m of the tree; and
  - (e) if the application relates to a tree that has heritage significance—the heritage council; and
  - (f) if the application relates to an Aboriginal heritage tree—each representative Aboriginal organisation.
- (3) However, the conservator need not give more than 1 notice to a particular person.

- (4) The conservator may give written notice of the decision to anyone else the conservator considers appropriate.

## **27 Operation of approval**

- (1) Subject to section 105 (Application for reconsideration of certain decisions), an approval takes effect on the date stated in the notice of decision.
- (2) The date stated in the notice must be at least 14 days after the day the notice is given to the applicant.
- (3) Unless sooner cancelled, the approval remains in force for the period stated in the approval.
- (4) The conservator may, in writing, extend the approval for a stated period if satisfied that the activity still satisfies the approval criteria.
- (5) The approval may be extended under subsection (4) even if it has already ended.

## **28 Cancellation of approval**

- (1) The conservator may cancel an approval if satisfied that the activity approved does not satisfy, or no longer satisfies, the approval criteria.
- (2) For an approval in relation to a declared site, the conservator must give written notice of the cancellation to—
- (a) the applicant; and
  - (b) the lessee of, or land management agency for, the land where the site is located; and
  - (c) the planning and land authority.
- (3) For any other approval, the conservator must give written notice of the cancellation to—
- (a) the applicant; and

- (b) the lessee of, or land management agency for, the land where the tree is located; and
  - (c) the lessee of, or land management agency for, the land where the activity was approved to be undertaken; and
  - (d) the lessee of land that—
    - (i) adjoins the land where the tree is located; and
    - (ii) is within 50m of the tree.
- (4) However, the conservator need not give more than 1 notice to a particular person.
- (5) For subsection (2) (a) and (3) (a), it is sufficient if the conservator sends the notice to the applicant at the address last given to the conservator by the applicant.
- (6) The conservator may give written notice of the cancellation to anyone else the conservator considers appropriate.
- (7) Subject to section 105 (Application for reconsideration of certain decisions), the cancellation takes effect on the date stated in the notice of cancellation.
- (8) The date stated in the notice must be at least 14 days after the day the notice is given to the applicant.

## **29 Approval in urgent circumstances or for minor works**

- (1) A person may apply to the conservator under this section for an approval for an activity that would or may—
- (a) damage a protected tree; or
  - (b) be prohibited groundwork in—
    - (i) the protection zone for a protected tree; or
    - (ii) a declared site.
- (2) The application may be made orally or in writing.

- (3) The conservator may approve the activity if satisfied that—
  - (a) the circumstances require the application to be considered urgently; and
  - (b) the activity is necessary to protect the health or safety of people or animals, or public or private property.
- (4) The conservator may also approve an activity that is, or may be, major pruning or prohibited groundwork in the protection zone for a protected tree if the conservator is satisfied the activity will have little or no adverse impact on the health or stability of the tree.
- (5) The approval may be given orally or in writing but the conservator must make a written record of any oral approval as soon as practicable after giving it.
- (6) The approval may be given subject to conditions stated in the approval.
- (7) The conservator must give written notice of the decision on the application to the applicant.
- (8) Unless sooner cancelled, the approval has effect for the period stated in the approval.

### **30 Contravening conditions of approval**

- (1) A person commits an offence if the person contravenes a condition of an approval given to the person under section 25 or section 29.  
Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

## Part 4 Tree management plans

*Note 1* A tree management plan may provide for activities that may be undertaken in relation to a tree and may set out conditions about how the activities are to be undertaken. Anything done in relation to a protected tree in accordance with a tree management plan for the tree is an exception to the offences against s 15 (Damaging protected trees—general) and s 17 (Doing prohibited groundwork—general).

*Note 2* This part also operates for an amendment or repeal of a tree management plan (see Legislation Act, s 46 (Power to make instrument includes power to amend or repeal)).

### 31 Guidelines for tree management plans

- (1) The conservator may, in writing, determine guidelines for tree management plans.
- (2) A determination is a notifiable instrument.

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

### 32 Proposal or application for approval of tree management plan

- (1) The conservator may, on the conservator's own initiative, propose a tree management plan for a registered tree.
- (2) The land management agency for the land where a registered tree is located may apply for a tree management plan for the tree.
- (3) Anyone else may apply for approval of a tree management plan for any tree on leased land in a built-up urban area.

*Note 1* If a form is approved under s 110 for an application, the form must be used.

*Note 2* A fee may be determined under s 109 for an application.

- (4) An application under subsection (2) or (3) must be in writing and must be given to the conservator.

- (5) The conservator may refuse to consider an application if satisfied that an adequate tree management plan is already in force for the tree.

**33 Further information for tree management plan application**

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

**34 Advisory panel advice on proposed tree management plan**

The conservator may ask the advisory panel for advice on the proposal or application.

**35 Decision on tree management plan**

- (1) If the conservator proposes, or receives an application for approval of, a tree management plan, the conservator must decide whether to approve the plan.
- (2) For a tree management plan for which approval is applied for, the conservator must make the decision within 30 days after the day the conservator receives the application.
- (3) In working out the 30-day period, any period when a requirement under section 33 (1) was not complied with is disregarded.
- (4) In making the decision, the conservator must have regard to—
- (a) the guidelines approved under section 31; and
  - (b) the advice (if any) of the advisory panel; and
  - (c) anything else the conservator considers relevant.



- (5) If the conservator approves a tree management plan for a registered tree, the conservator must include details of the plan in the tree register.

### **36 Notice of decision on tree management plan**

- (1) The conservator must give written notice of the decision on the tree management plan to the applicant (if any).
- (2) If the decision is to approve the tree management plan, the conservator must also give written notice of the decision to—
- (a) the lessee of, or land management agency for, the land where the tree is located; and
  - (b) if the tree is on leased land—the lessee of, or land management agency for, land that—
    - (i) adjoins the land where the tree is located; and
    - (ii) is within 50m of the tree; and
  - (c) if the plan is for a tree that the conservator considers may have heritage significance—the heritage council; and
  - (d) if the plan is for an Aboriginal heritage tree—each representative Aboriginal organisation.
- (3) However, the conservator need not give more than 1 notice to a particular person.
- (4) The conservator may give written notice of the decision to anyone else the conservator considers appropriate.

### **37 Operation of tree management plan**

- (1) Subject to section 105 (Application for reconsideration of certain decisions), a tree management plan takes effect on the date stated in the notice of decision.

**Part 4**            Tree management plans

Section 37

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- (2) The date stated in the notice must be at least 14 days after the day the notice is given to—
  - (a) the applicant; or
  - (b) for a tree management plan proposed on the conservator's own initiative—the people mentioned in section 36 (2).

## Part 5 Tree management precincts

### 38 Criteria for tree management precincts

- (1) The Minister may, in writing, determine criteria for declaring an area of land in a built-up urban area to be a tree management precinct.
- (2) A determination is a disallowable instrument.

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

### 39 Tree management precinct declaration

- (1) The Minister may, in writing, declare a stated area of land in a built-up urban area to be a tree management precinct.
- (2) The Minister may declare an area of land in a built-up urban area to be a tree management precinct only if satisfied that the area satisfies the criteria determined under section 38.
- (3) A declaration is a notifiable instrument.

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

## Part 6 Tree register

### 40 Meaning of *registered tree* for pt 6

In this part:

*registered tree* does not include a provisionally registered tree.

### 41 Tree register

- (1) The conservator must keep a register of trees (the *tree register*).
- (2) The tree register must include—
  - (a) for each provisionally registered tree—
    - (i) everything required to be entered in the register under section 48; and
    - (ii) the tree management plan (if any) for the tree; and
  - (b) for each registered tree—
    - (i) everything required to be entered in the register under section 54 (2); and
    - (ii) the tree management plan (if any) for the tree; and
  - (c) for each declared site—
    - (i) a description of the area that is the declared site; and
    - (ii) the date the declaration was made; and
  - (d) the following information about any activity in relation to a provisionally registered or registered tree, or a declared site, for which an approval under division 3.3 is in force:
    - (i) the activity approved;
    - (ii) any conditions to which the approval is subject;

- (iii) the period of the approval; and
  - (e) any changes to the information in the register that are necessary to keep the register up-to-date.
- (3) The tree register may also include any other information the conservator considers relevant.

#### **42 Correction of tree register**

The conservator may correct a mistake or omission in the tree register subject to the requirements (if any) prescribed by regulation.

#### **43 Inspection of tree register**

- (1) A person may, without charge, inspect the tree register during ordinary office hours at the office of the conservator.
- (2) A person may make a copy of all or part of the tree register.

*Note* A fee may be determined under s 109 for s (2).

#### **44 Restricted information in tree register**

- (1) This section applies if anything required to be entered in the tree register in relation to a tree is restricted information.
- (2) The conservator must include a statement in the register about the effect of subsections (3) and (4).
- (3) The restricted information must not be disclosed or copied under section 43 except in accordance with subsection (4).
- (4) The restricted information may be made available for inspection or copying only if the publication of the information is approved under section 66 (Approval to publish restricted information).

## Part 7 Registration of trees

### Division 7.1 Criteria for registration and cancellation

#### 45 Criteria for registration and cancellation of registration

- (1) The Minister may, in writing, determine—
  - (a) criteria (the *registration criteria*) for the registration of a tree; and
  - (b) criteria (the *cancellation criteria*) for the cancellation of the registration of a 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.

### Division 7.2 Registration process

#### 46 Nomination for registration

- (1) Anyone (including the conservator) may nominate a tree in a built-up urban area for registration.

*Note 1* If a form is approved under s 110 for a nomination, the form must be used.

*Note 2* A fee may be determined under s 109 for a nomination.

- (2) A nomination must be in writing and must be given to the conservator.

#### 47 Decision on provisional registration

- (1) Within 6 months after the day the conservator receives a nomination for a tree, the conservator must decide whether to provisionally register the tree.

- (2) The conservator may provisionally register a tree only if the conservator considers the tree may satisfy the registration criteria.
- (3) The conservator may refuse to consider a nomination if satisfied the nomination is frivolous or vexatious.

#### **48 Provisional registration**

If the conservator decides to provisionally register a tree, the conservator must provisionally register the tree by entering in the tree register—

- (a) enough information to enable the tree to be identified; and
- (b) if practicable, the tree's botanical name and any relevant horticultural information; and
- (c) a description of the protection zone for the tree; and
- (d) an indication that the registration is provisional; and
- (e) the period of the provisional registration.

#### **49 Notice of decision on provisional registration**

- (1) The conservator must give written notice of a decision under section 47 to—
  - (a) the person who nominated the tree for registration; and
  - (b) the lessee of, or land management agency for, the land that includes all or part of the protection zone for the tree; and
  - (c) if the conservator considers the tree may have heritage significance—the heritage council.
- (2) However, the conservator need not give more than 1 notice to a particular person.
- (3) The conservator may give written notice of the decision to anyone else the conservator considers appropriate.

- (4) The conservator must also publish notice of the decision in a daily newspaper circulating generally in the ACT.
- (5) A notice under this section must include—
  - (a) enough information to enable the tree to be identified; and
  - (b) a statement to the effect that any comments on the proposed registration of the tree may be given to the conservator on or before the closing date stated in the notice.
- (6) The closing date must be at least 21 days after the day the notice is published in a daily newspaper circulating generally in the ACT.
- (7) A notice under this section must not include restricted information.

## **50 Consultation on proposed registration**

- (1) After making a decision under section 47, the conservator must ask the advisory panel for advice on the proposed registration of the tree.
- (2) If the conservator considers the tree may have heritage significance, the conservator must also ask the heritage council for advice on the proposed registration.
- (3) If the tree is an Aboriginal heritage tree, the heritage council must consult, and consider the views of, each representative Aboriginal organisation before giving the conservator advice on the proposed registration.

## **51 Period of provisional registration**

- (1) The provisional registration of a tree is for 1 year beginning on the day it is provisionally registered.
- (2) However, the provisional registration ends if, within the year—
  - (a) the tree is registered; or
  - (b) the conservator decides not to register the tree and either—



- (i) the appeal period has ended and no appeal has been made;  
or
  - (ii) any appeal has been finally decided and is unsuccessful.
- (3) The conservator may provisionally register a tree more than once.

## **52 Decision on registration**

- (1) Within 1 year after the day the tree is provisionally registered, the conservator must decide whether to register the tree.
- (2) In deciding whether to register the tree, the conservator must have regard to—
- (a) any advice on the proposed registration given to the conservator by the advisory panel or the heritage council; and
  - (b) any comments received on the proposed registration on or before the closing date stated in the notice under section 49.

*Note* A decision under this section is a reviewable decision (see s 107).

- (3) The conservator may register the tree only if the conservator considers the tree satisfies the registration criteria.

## **53 Notice of decision on registration**

- (1) The conservator must give written notice of a decision under section 52 to—
- (a) the person who nominated the tree for registration; and
  - (b) the lessee of, or land management agency for, the land where the tree is located; and
  - (c) if the tree is on leased land—the lessee of, or land management agency for, land that—
    - (i) adjoins the land where the tree is located; and
    - (ii) is within 50m of the tree; and

- (d) anyone who gave the conservator—
    - (i) written comments about the proposed registration; and
    - (ii) contact details for notification of the conservator's decision; and
  - (e) if the heritage council gave advice on the proposed registration—the heritage council.
- (2) However, the conservator need not give more than 1 notice to a particular person.
  - (3) The conservator may give written notice of the decision to anyone else the conservator considers appropriate.
  - (4) If the decision is to register the tree, the conservator must also publish notice of the decision in a daily newspaper circulating generally in the ACT.
  - (5) A notice under this section must not include restricted information.

## **54 Registration**

- (1) This section applies if—
  - (a) the conservator decides to register a tree; and
  - (b) either—
    - (i) the appeal period has ended and no appeal has been made; or
    - (ii) any appeal has been finally decided and is unsuccessful.
- (2) The conservator must register the tree by entering in the tree register—
  - (a) a photograph or other image of the tree; and
  - (b) the tree's location; and

- (c) the tree's botanical name and any relevant horticultural information; and
- (d) a description of the protection zone for the tree; and
- (e) a statement about the tree's significance.

## **Division 7.3                      Cancellation of registration**

### **55                      Proposal for cancellation of registration**

- (1) Anyone (including the conservator) may propose that the registration of a tree be cancelled.

*Note 1* If a form is approved under s 110 for a proposal, the form must be used.

*Note 2* A fee may be determined under s 109 for a proposal.

- (2) A proposal must be in writing and must be given to the conservator.
- (3) The conservator may refuse to consider a proposal if satisfied the proposal is frivolous or vexatious.

### **56                      Notice of proposed cancellation of registration**

- (1) Before considering a proposal for the cancellation of the registration of a tree, the conservator must give written notice of the proposed cancellation to—
  - (a) the person who proposed the cancellation; and
  - (b) the lessee of, or land management agency for, the land where the tree is located; and
  - (c) if the tree is on leased land—the lessee of, or land management agency for, land that—
    - (i) adjoins the land where the tree is located; and
    - (ii) is within 50m of the tree; and
  - (d) if the tree register indicates that the tree has heritage significance—the heritage council.

- (2) However, the conservator need not give more than 1 notice to a particular person.
- (3) The conservator may give written notice of the proposed cancellation to anyone else the conservator considers appropriate.
- (4) The conservator must also publish notice of the proposed cancellation in a daily newspaper circulating generally in the ACT.
- (5) A notice under this section must include—
  - (a) an indication of whether the conservator considers that the proposed cancellation may satisfy the cancellation criteria; and
  - (b) if the conservator considers there may be grounds for making a declaration under section 61 in relation to the cancellation—an indication of that fact; and
  - (c) a statement to the effect that any comments about the proposed cancellation may be given to the conservator by the closing date stated in the notice.
- (6) The closing date must be at least 21 days after the day the notice is published in a daily newspaper circulating generally in the ACT.
- (7) A notice under this section must not include restricted information.

**57 Consultation on proposed cancellation of registration**

- (1) After giving notice under section 56, the conservator must ask the advisory panel for advice on the proposed cancellation and any proposed declaration under section 61.
- (2) If the tree register indicates that the tree has heritage significance, the conservator must also ask the heritage council for advice on the proposed cancellation.
- (3) If the tree is an Aboriginal heritage tree, the heritage council must consult, and consider the views of, each representative Aboriginal organisation before giving the conservator advice on the proposed cancellation.

**58 Decision on cancellation of registration etc**

- (1) Within 6 months after the day the conservator publishes the notice mentioned in section 56 (4), the conservator must decide whether to cancel the registration of the tree.
- (2) In deciding whether to cancel the registration of the tree (and whether to make a declaration under section 61 in relation to the cancellation), the conservator must have regard to—
  - (a) any advice on the proposed cancellation or declaration given to the conservator by the advisory panel or the heritage council; and
  - (b) any comments received on the proposed cancellation or declaration on or before the closing date stated in the notice under section 56.

*Note* A decision under this section is a reviewable decision (see s 107).

- (3) The conservator may cancel the registration of the tree only if the conservator considers the cancellation satisfies the cancellation criteria.

**59 Notice of decision on cancellation of registration**

- (1) The conservator must give written notice of a decision under section 58 to—
  - (a) the person who proposed the cancellation; and
  - (b) the lessee of, or land management agency for, the land where the tree is located; and
  - (c) if the tree is on leased land—the lessee of, or land management agency for, land that—
    - (i) adjoins the land where the tree is located; and
    - (ii) is within 50m of the tree; and

- (d) anyone who gave the conservator—
    - (i) written comments about the proposed cancellation of registration; and
    - (ii) contact details for notification of the conservator's decision; and
  - (e) if the heritage council gave advice on the proposed cancellation—the heritage council.
- (2) However, the conservator need not give more than 1 notice to a particular person.
  - (3) The conservator may give written notice of the decision to anyone else the conservator considers appropriate.
  - (4) If the decision is to cancel the registration, the conservator must also publish notice of the decision in a daily newspaper circulating generally in the ACT.
  - (5) A notice under this section must not include restricted information.

## **60 Cancellation of registration**

- (1) This section applies if—
  - (a) the conservator decides to cancel the registration of a tree; and
  - (b) either—
    - (i) the appeal period has ended and no appeal has been made; or
    - (ii) any appeal has been finally decided and is unsuccessful.
- (2) The conservator must cancel the registration of the tree by removing the entry about the tree from the tree register.

- (3) However, if the conservator makes a declaration under section 61 in relation to the tree, the entry about the tree must remain in the register while the declaration is in force but must include a statement that the registration of the tree has been cancelled.

*Note* Details about declared sites must be entered in the register (see s 41).

## **61 Site declarations**

- (1) This section applies if—
- (a) a registered tree is damaged by conduct other than conduct mentioned in section 19 (1); and
  - (b) the registration of the tree is cancelled; and
  - (c) the conservator is satisfied, on reasonable grounds, that the cancellation is reasonably attributable to the damage caused by the conduct.

- (2) The conservator may, in writing, declare the area that was the protection zone for the tree immediately before the registration was cancelled to be a declared site.

- (3) A declaration is a notifiable instrument.

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

- (4) Also—
- (a) the conservator must give written notice of the declaration to—
    - (i) the lessee of the land where the tree is located; and
    - (ii) the planning and land authority; and
  - (b) the conservator may give written notice of the declaration to anyone else the conservator considers appropriate.
- (5) Unless sooner revoked, a declaration has effect for 5 years from the day it is made.

## Part 8 Restricted information

### 62 Application of pt 8

This part applies in relation to—

- (a) a registered tree; or
- (b) a tree that has been nominated for registration.

### 63 Restricted non-Aboriginal information

- (1) The conservator may, in writing, declare particular information about the location or nature of the tree to be restricted information.
- (2) The conservator may make the declaration only if satisfied, on reasonable grounds, that public disclosure of the information would be likely to have a substantial adverse effect on the values for which the tree is or may be registered.
- (3) The conservator must use the conservator's best endeavours to give a copy of the declaration to—
  - (a) the person who nominated the tree for registration; and
  - (b) the lessee of, or land management agency for, the land where the tree is located; and
  - (c) the lessee of, or land management agency for, land that—
    - (i) adjoins the land where the tree is located; and
    - (ii) is within 50m of the tree; and
  - (d) if the tree has or may have heritage significance—the heritage council.



**64 Restricted Aboriginal information**

- (1) If the tree is an Aboriginal heritage tree, information about the location or nature of the tree is restricted information unless the conservator declares in writing that it is not.
- (2) Before making a declaration under subsection (1), the conservator must consult, and consider the views of, each representative Aboriginal organisation about the information.
- (3) The conservator must use the conservator's best endeavours to give a copy of the declaration to—
  - (a) the person who nominated the tree for registration; and
  - (b) the lessee of, or land management agency for, the land where the tree is located; and
  - (c) the lessee of, or land management agency for, land that—
    - (i) adjoins the land where the tree is located; and
    - (ii) is within 50m of the tree; and
  - (d) the heritage council; and
  - (e) each representative Aboriginal organisation.

**65 Restricted information not to be published without approval**

- (1) A person commits an offence if the person—
  - (a) publishes restricted information about a tree; and
  - (b) knows that the information is restricted information.Maximum penalty: 50 penalty units.
- (2) Subsection (1) does not apply if the publication is—
  - (a) in accordance with an approval under section 66; or

- (b) for the exercise of a function under this Act or another territory law; or
- (c) by an Aboriginal person to another Aboriginal person and is about an Aboriginal heritage tree.

**66 Approval to publish restricted information**

- (1) The conservator may approve the publication of restricted information about a tree if satisfied that the publication will not have a substantial adverse effect on the values for which the tree is or may be registered.
- (2) An approval may be given only on application.
- (3) An approval must be given in writing to the applicant.
- (4) An application must be in writing and must—
  - (a) identify the restricted information proposed to be published; and
  - (b) state the reason for the publication; and
  - (c) state the nature of the publication, including the person, people or kind of people to whom it would be directed.

*Note 1* If a form is approved under s 110 for an application, the form must be used.

*Note 2* A fee may be determined under s 109 for an application.

**67 Limited access to restricted information**

- (1) This section applies if—
  - (a) land is offered for sale; and
  - (b) an interested person for the land applies to the conservator for access to restricted information relevant to the conservation and use of the land.

*Note 1* If a form is approved under s 110 for an application, the form must be used.

*Note 2* A fee may be determined under s 109 for an application.

(2) The conservator must give the applicant the restricted information sought, together with a written explanation about the operation of this part.

(3) In this section:

***interested person***—each of the following is an ***interested person*** for land where a tree is located:

- (a) someone considering buying an interest in the land;
- (b) the person who nominated the tree for registration;
- (c) the lessee of, or land management agency for, the land where the tree is located;
- (d) the lessee of, or land management agency for, land that—
  - (i) adjoins the land where the tree is located; and
  - (ii) is within 50m of the tree;
- (e) if the tree has or may have heritage significance—the heritage council;
- (f) if the tree is an Aboriginal heritage tree—each representative Aboriginal organisation.

## Part 9 Tree advisory panel

### 68 Establishment of advisory panel

The Tree Advisory Panel (the *advisory panel*) is established.

### 69 Members of advisory panel

- (1) The advisory panel consists of 3 or more members appointed by the Minister.

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

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

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) A member must be appointed to the advisory panel for a term of at least 1 year and not longer than 2 years.
- (3) The Minister must not appoint a person to the advisory panel unless the person has extensive experience in 1 or more of the following fields:
  - (a) arboriculture;
  - (b) forestry;
  - (c) horticulture;
  - (d) landscape architecture;
  - (e) natural and cultural heritage.

- (4) The panel must include—
- (a) 1 or more members with extensive experience in arboriculture or forestry; and
  - (b) members who between them include people with extensive experience in 2 or more of the fields mentioned in subsection (3).

## **70 Functions of advisory panel**

The advisory panel has the following functions:

- (a) to give any advice requested by the conservator, including advice on the following:
  - (i) an application for approval of an activity under division 3.3;
  - (ii) an application for approval of a tree management plan;
  - (iii) the proposed registration of a tree;
  - (iv) the proposed cancellation of registration of a tree;
  - (v) a request for reconsideration of a decision; and
- (b) to give other advice to the conservator on anything relevant to the conservator's functions in relation to tree protection.

## **71 Ending appointment—advisory panel members**

The Minister may, by written notice to a member of the advisory panel, end the member's appointment to the advisory panel—

- (a) for misbehaviour or physical or mental incapacity; or
- (b) for contravening section 72.

*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

## **72 Disclosure of interests—advisory panel members**

- (1) This section applies if—
  - (a) a member of the advisory panel has a direct or indirect financial interest or personal interest in an issue in relation to which the advisory panel has been asked to advise the conservator; and
  - (b) the interest could conflict with the proper exercise of the advisory panel's functions in relation to the advice.
- (2) As soon as practicable after the member or the advisory panel becomes aware of the relevant facts, the member or advisory panel must disclose the nature of the interest to the conservator.
- (3) The member must not advise, or further advise, the conservator in relation to the issue, unless the conservator directs otherwise.
- (4) 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.

## **73 Advisory panel's procedures etc**

A regulation may prescribe procedures of the advisory panel, including how decisions are made by the panel.

### **Examples of what a regulation may prescribe**

- 1 the quorum at meetings of the advisory panel
- 2 who is to preside at meetings of the advisory panel
- 3 how questions are to be resolved at meetings of the advisory panel

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**74 Delegation by advisory panel**

- (1) The advisory panel may delegate any of its functions to a member of the advisory panel subject to the requirements (if any) prescribed by regulation.

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

- (2) However, the advisory panel may only delegate the following functions to a member of the panel with extensive experience in arboriculture, forestry or horticulture:
- (a) giving advice to the conservator in relation to an approval of an activity under division 3.3;
  - (b) giving advice to the conservator in relation to an approval of a tree management plan.

## Part 10 Tree protection directions

### 75 Criteria for tree protection directions

- (1) The conservator may, in writing, determine criteria for the giving of tree protection directions.
- (2) A determination is a notifiable instrument.

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

### 76 Conservator may give tree protection directions

- (1) The conservator may give the owner or occupier of land where a protected tree is located, or anyone undertaking an activity that may affect a protected tree, a written direction (a ***tree protection direction***) to do or not do something for the protection of the tree.

**Example**

to erect a fence around a tree

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A direction may only be given in accordance with the criteria determined under section 75.
- (3) The direction must state the period for which it is in force.
- (4) In this section:

***protected tree*** includes a tree that has been nominated for registration under section 46 if the conservator has not decided whether to provisionally register, or refused to consider the nomination, under section 47.



**77 Service of tree protection direction**

- (1) A tree protection direction may be given to the owner or occupier of land by leaving it, secured conspicuously, on or at the land.
- (2) A tree protection direction may be given to anyone undertaking an activity that may affect a protected tree by leaving it, secured conspicuously, at the place where the activity is being undertaken.

*Note* For how directions may be served generally, see the Legislation Act, pt 19.5.

**78 Contravention of tree protection direction—offence**

A person commits an offence if the person intentionally contravenes a tree protection direction.

Maximum penalty: 50 penalty units.

**79 Contravention of tree protection direction—action by authorised person**

- (1) This section applies if a person does not comply with a tree protection direction requiring the person to do something in relation to a tree.
- (2) An authorised person, or anyone else authorised by the conservator for this section, may enter the land where the tree is located and—
  - (a) do the thing stated in the direction; or
  - (b) do or finish any work stated in the direction.
- (3) The reasonable cost incurred by the Territory in doing anything under subsection (2) is a debt owing to the Territory by the person to whom the direction was given.
- (4) The conservator must give the lessee of the land where the tree is located written notice of the action proposed under subsection (2) at least 1 working day before the day the action is to begin.

- (5) The conservator may give written notice of the proposed action to anyone else the conservator considers appropriate.
- (6) The notice must include the following:
  - (a) a statement about the operation of this section;
  - (b) the purpose and nature of the proposed action;
  - (c) the time or times when the action is proposed to be taken;
  - (d) a statement about the obligations of the authorised person and the Territory under subsection (8).
- (7) A person may waive the right to all or part of the minimum period of notice under subsection (4).
- (8) Section 102 (Damage etc to be minimised) and section 103 (Compensation for exercise of enforcement powers) apply to any action taken under subsection (2) as if—
  - (a) it were the exercise of a function under part 12 (Enforcement) by an authorised person or a person assisting an authorised person; and
  - (b) any changes prescribed by regulation, and all other necessary changes, were made.

## Part 11 Land development applications

### 80 Meaning of *development* for pt 11

In this part:

***development*** means a proposed development to which an application under the Land Act, part 6 (Approvals and orders) applies.

### 81 Simplified outline

The following notes provide a simplified outline of this part and the Land Act, part 6:

*Note 1 Conservator to be given copy of development application*

The planning and land authority must give the conservator a copy of each development application that relates to land that includes the protection zone for a protected tree or a declared site (including any tree management plan, proposed tree management plan, or proposed amendment of a tree management plan, included with the application) (see Land Act, s 229).

*Note 2 Conservator to give advice on application*

The conservator must provide advice to the planning and land authority in relation to tree protection and the development (see s 82 and s 83).

*Note 3 Conservator's advice to be considered*

The conservator's advice must be considered by the planning and land authority (or the Minister) in approving or refusing to approve a development application (see Land Act, s 231).

*Note 4 Approvals*

A development approval must not be given that is inconsistent with the advice of the conservator in relation to a registered tree.

A development approval may be given that is inconsistent with the advice of the conservator in relation to a regulated tree only in the circumstances described in the Land Act, s 231.

**82 Advice about tree protection on land subject to development**

- (1) This section applies if the conservator is satisfied, on reasonable grounds, that a development involves, or is likely to involve, an activity that would or may—
  - (a) damage a protected tree; or
  - (b) be prohibited groundwork in—
    - (i) the protection zone for a protected tree; or
    - (ii) a declared site.
- (2) The conservator may give the planning and land authority written advice in accordance with section 83 about the development.
- (3) However, if the planning and land authority gives the conservator notice of a development application under the Land Act, section 229 the conservator must, as soon as practicable but within 30 working days after the day it is given the notice—
  - (a) consider the application, including any tree management plan, proposed tree management plan, or proposed amendment of a tree management plan, included with the application; and
  - (b) give the authority written advice in accordance with section 83.

**83 Requirements for conservator's advice about tree protection**

- (1) The conservator's advice under section 82 in relation to a development must include advice about tree protection requirements for each protected tree with a protection zone on, or partly on, the land subject to the development.
- (2) Without limiting subsection (1), the advice may—
  - (a) include information about the trees on the land; and

- (b) set out the changes (if any) the conservator considers should be made to any tree management plan or proposed tree management plan that relates to the application, having regard to—
- (i) the guidelines approved under section 31; and
  - (ii) the advice (if any) of the advisory panel; and
  - (iii) anything else the conservator considers relevant.

## Part 12            Enforcement

### Division 12.1    General

#### 84            Definitions for pt 12

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 12.2      Authorised people**

### **85      Appointment of authorised people**

The chief executive may appoint a public servant to be an authorised person for this Act.

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

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

### **86      Identity cards**

- (1) The chief executive must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
  - (a) a recent photograph of the person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
  - (a) the person stops being an authorised person; and
  - (b) the person does not return the person's identity card to the chief executive as soon as practicable, but no later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

## Division 12.3 Powers of authorised people

### 87 Power to enter premises

- (1) For this Act, an authorised person may—
  - (a) at any reasonable time, enter premises to—
    - (i) inspect a tree, or the area near a tree, that is registered or proposed to be registered; or
    - (ii) give a tree protection direction to the owner or occupier; or
  - (b) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (c) at any time, enter premises with the occupier's consent; or
  - (d) enter premises in accordance with a search warrant.
- (2) However, subsection (1) (a) or (b) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.

### 88 Production of identity card

An authorised person must not remain at premises entered under this part if the authorised person does not produce his or her identity card when asked by the occupier.



**89 Consent to entry**

- (1) When seeking the consent of an occupier of premises to enter premises under section 87 (1) (c), 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 (an *acknowledgment of consent*)—
  - (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 find that the occupier did not consent to entry to the premises by the authorised person under this part if—
  - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent for the entry is not produced in evidence; and

- (c) it is not proved that the occupier consented to the entry.

## **90 General powers on entry to premises**

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
- (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take samples;
  - (d) take photographs, films, or audio, video or other recordings;
  - (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

## **91 Power to require name and address**

- (1) An authorised person may require a person to state the person's name and home address if the authorised person believes, on reasonable grounds, that the person is committing or has just committed an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The authorised person must tell the person the reason for the requirement and, as soon as practicable, record the reason.

- (3) The person may ask the authorised person to produce his or her identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the authorised person—
  - (a) tells the person the reason for the requirement; and
  - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) In this section:

*home address*, of a person, means the address of the place where the person usually lives.

## **92 Power to seize things**

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at 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 told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises 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 commits an offence if—
  - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
  - (b) the person does not have an authorised person’s approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (6) An offence against this section is a strict liability offence.

## **Division 12.4 Search warrants**

### **93 Warrants generally**

- (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 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 connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The warrant must state—
- (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things 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 day of the warrant's issue, the warrant ends.

#### **94 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 the terms of the warrant; 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 (the *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 find that a power exercised by the authorised person was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding in 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.

**95 Search warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a search warrant—
  - (a) announce that the authorised person is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
  - (a) the safety of anyone (including the authorised person or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**96 Details of search warrant to be given to occupier etc**

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**97 Occupier entitled to be present during search etc**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

**Division 12.5 Return and forfeiture of things seized**

**98 Receipt for things seized**

- (1) As soon as practicable after an authorised person seizes a thing 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 under section 92 (Power to seize things).
- (3) A receipt under this section must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the authorised person's name, and how to contact the authorised person;
  - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.



**99 Moving things to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
  - (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
    - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
  - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for no longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.

- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

**100 Access to things seized**

A person who would, apart from the seizure, be entitled to inspect 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.

**101 Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing if—
- (a) an infringement notice for an offence relating to the thing is not served on the owner within 1 year after the day of the seizure and—
    - (i) a prosecution for an offence relating to the thing is not begun within the 1-year period; or
    - (ii) a prosecution for an offence relating to the thing is begun within the 1-year period but the court does not find the offence proved; or
  - (b) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
    - (i) a prosecution for an offence relating to the thing is not begun within the 1-year period; or
    - (ii) a prosecution for an offence relating to the thing is so begun but the court does not find the offence proved; or

- (c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—
  - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under section 132 that liability is disputed; or
  - (ii) an information is laid in the Magistrates Court against the person for the offence within the 60-day period, but the Magistrates Court does not find the offence proved.
- (2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
  - (a) is forfeited to the Territory; and
  - (b) may be sold, destroyed or otherwise disposed of as the chief executive directs.

## **Division 12.6      Miscellaneous**

### **102      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 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 the authorised person believes, on reasonable grounds, is the owner of the thing.

- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

### **103 Compensation for exercise of enforcement powers**

- (1) A person may claim 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) A regulation 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 13                      Review of decisions

### 104            Notice of decisions that can be reconsidered or reviewed

- (1) If the conservator makes a decision that can be reconsidered or reviewed under this part, the conservator must give written notice of the decision to each person entitled to apply for reconsideration or review of the decision.
- (2) The notice must comply with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (3) In particular, the notice must tell the person—
  - (a) whether the person has the right to apply for reconsideration of the decision or the right to apply for review of the decision by the administrative appeals tribunal, and how the application must be made; and
  - (b) if the person has the right to apply for reconsideration of the decision—that the person has the right to apply to the administrative appeals tribunal for review of the decision on the reconsideration; and
  - (c) about the options available under other territory laws to have the decision reviewed by a court or the ombudsman.

### 105            Application for reconsideration of certain decisions

- (1) Application may be made to the conservator for reconsideration of any of the following decisions of the conservator:
  - (a) to approve, or refuse to approve, an activity under section 25;
  - (b) to cancel the approval of an activity under section 28;

- (c) to approve, or refuse to approve, a tree management plan under section 35.
- (2) The application may be made by anyone to whom the conservator gave notice of the decision to be reconsidered.
- (3) The application must be made within 14 days after the day the notice of decision was given to the person.
- (4) The application must be in writing and must set out the grounds on which reconsideration of the decision is sought.
- (5) If the application is made in accordance with this section, the making of the application automatically stays the operation of the decision until the application is finally dealt with.

## **106 Reconsideration of decisions**

- (1) As soon as practicable after receiving an application for reconsideration of a decision (the *first decision*), the conservator must, in writing, ask the advisory panel for advice on the application.
- (2) Within 30 days after the day the advisory panel receives the conservator's request, the advisory panel must give the conservator its advice.
- (3) Within 30 days after the day the conservator receives the advisory panel's advice, the conservator must—
  - (a) reconsider the first decision having regard to the advisory panel's advice; and
  - (b) confirm, vary or revoke the first decision.
- (4) The conservator must give written notice of the decision on the reconsideration to everyone to whom the conservator gave notice of the first decision.

**107 Review of decisions by AAT**

- (1) Application may be made to the administrative appeals tribunal for review of the following decisions (a *reviewable decision*) of the conservator:
  - (a) to approve, or refuse to approve, the registration of a tree under section 52;
  - (b) to cancel, or refuse to cancel, the registration of a tree under section 58;
  - (c) to make a declaration under section 61;
  - (d) to approve, or refuse to approve, the publication of restricted information under section 66;
  - (e) to give a tree protection direction under section 76;
  - (f) to confirm, vary or revoke a decision reconsidered under section 106.
- (2) The application may be made by anyone to whom the conservator gave notice of the reviewable decision.
- (3) The application must be made within 21 days after the day the person was given notice of the reviewable decision.

## Part 14 Miscellaneous

### 108 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits an offence (a *relevant offence*) by contravening any of the following provisions of this Act:
    - (i) section 15 (Damaging protected trees—general);
    - (ii) section 16 (Damaging protected trees—work done as part of a business);
    - (iii) section 17 (Doing prohibited groundwork—general);
    - (iv) section 18 (Doing prohibited groundwork—work done as part of a business);
    - (v) section 20 (Failing to notify or contravening tree protection conditions; of development approval);
    - (vi) section 30 (Contravening conditions of approval);
    - (vii) section 78 (Contravention of tree protection direction—action by authorised person); and
  - (b) the officer was reckless about whether the contravention would happen; and
  - (c) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention.
- Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.
- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.



- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
    - (i) that the corporation arranges regular professional assessments of the corporation's compliance with the contravened provision;
    - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
    - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
  - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.
- (6) In this section:

*executive officer*, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

## 109 Determination of fees

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

*Note* The Legislation Act 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.

### **110        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 the Legislation Act, s 255.

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

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

### **111        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 by regulation.

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

- (2) However, the conservator must not delegate the function of—
- (a) deciding under section 52 whether to register a tree; or
  - (b) deciding under section 58 whether to cancel the registration of a tree; or
  - (c) reconsidering a decision under section 106.

**112 Incorporation of documents**

A statutory instrument under this Act may apply, adopt or incorporate an instrument or provision of an instrument as in force from time to time.

**113 Inspection of incorporated documents**

- (1) This section applies to an incorporated document, or an amendment or replacement of an incorporated document.

*Note* For the meaning of *incorporated document*, see the dictionary.

- (2) The chief executive must ensure that the document, amendment or replacement is made available for inspection free of charge to the public on business days at reasonable times at the office of an administrative unit administered by the chief executive.

- (3) In this section:

*amendment*, of an incorporated document—see section 114 (6).

**114 Notification of certain incorporated documents**

- (1) This section applies to an incorporated document, or an amendment or replacement of an incorporated document.

**Example of replacement document**

a new edition of the incorporated document

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The chief executive may prepare a written notice (an *incorporated document notice*) for the incorporated document, amendment or replacement that contains the following information:

- (a) for an incorporated document—details of the document, including its title, author and date of publication;

- (b) for a replacement of an incorporated document—details of the replacement, including its title, author and date of publication;
  - (c) for an amendment of an incorporated document—the date of publication of the amendment (or of the document as amended) and a brief summary of the effect of the amendment;
  - (d) for an incorporated document or any amendment or replacement—
    - (i) a date of effect (no earlier than the day after the day of notification of the notice); and
    - (ii) details of how access to inspect the document, amendment or replacement may be obtained under section 113 (Inspection of incorporated documents); and
    - (iii) details of how copies may be obtained, including an indication of whether there is a cost involved.
- (3) An incorporated document notice is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (4) An incorporated document, and any amendment or replacement of an incorporated document, has no effect under this Act unless—
- (a) an incorporated document notice is notified in relation to the document, amendment or replacement; or
  - (b) the document, amendment or replacement is notified under the Legislation Act, section 47 (6).
- (5) The Legislation Act, section 47 (7) does not apply in relation to incorporated documents.
- (6) In this section:
- amendment***, of an incorporated document, includes an amendment of a replacement for the incorporated document.

**replacement**, for an incorporated document, means—

- (a) a document that replaces the incorporated document; or
- (b) a document (an **initial replacement**) that replaces a document mentioned in paragraph (a); or
- (c) a document (a **further replacement**) that replaces an initial replacement or any further replacement.

## **115 Regulation-making power**

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

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

- (2) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

## Part 15 Transitional

### 116 Definitions for pt 15

In this part:

*commencement day* means the day this Act commences.

*old Act* means the *Tree Protection (Interim Scheme) Act 2001*.

### 117 Legislation repealed

- (1) The *Tree Protection (Interim Scheme) Act 2001* A2001-20 is repealed.
- (2) The following instruments are repealed:
  - *Determination of criteria for approval to undertake a tree damaging activity* DI2001-60
  - *Tree Protection (Interim Scheme) Determination of Criteria 2002* DI2003-5
  - *Tree Protection (Interim Scheme) Appointment 2005* DI2005-159

### 118 Heritage trees

- (1) An individual tree in a built-up urban area that is included in the heritage register immediately before the commencement day is taken to be registered under this Act.
- (2) As soon as practicable, the conservator must enter in the tree register the details mentioned in section 54 (2) about the tree.
- (3) The heritage council—
  - (a) must remove the tree's registration details from the heritage register; and
  - (b) may make any consequential amendment of the heritage register it considers appropriate.

**119 Interim tree management precincts**

The built-up urban area in each district under the *Districts Act 2002* is taken to be a tree management precinct on the commencement day.

**120 Approved activities**

- (1) This section applies to an approval in force under the old Act, section 15 immediately before the commencement day.
- (2) The approval—
  - (a) continues in force as if it had been given under this Act, section 25; and
  - (b) may be extended or cancelled by the conservator under this Act.

**121 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including its operation in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

**122 Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

**123 Expiry of pt 15**

This part expires 2 years after the day it commences.

## Schedule 1 Consequential amendments

(see s 122)

### Part 1.1 Administrative Appeals Tribunal Act 1989

#### [1.1] Section 49A

*omit*

- *Tree Protection (Interim Scheme) Act 2001*

*substitute*

- *Tree Protection Act 2005*

#### [1.2] Section 49B

*omit*

- *Tree Protection (Interim Scheme) Act 2001*

*substitute*

- *Tree Protection Act 2005*

### Part 1.2 Heritage Act 2004

#### [1.3] New section 3A

*insert*

#### 3A Individual heritage trees

- (1) The council must not register an individual tree in a built-up urban area.
- (2) Subsection (1) does not prevent the registration of a place where a tree or trees form part of the heritage significance of the place.



(3) In this section:

***built-up urban area***—see the *Tree Protection Act 2005*, section 7 (2) (Application of Act—built-up urban area).

*Note* The *Tree Protection Act 2005* includes provision for the protection of trees of heritage significance in built-up urban areas. For trees of heritage significance, it provides for the heritage council to be told about approved activities, tree management plans and provisional registration under that Act. It also provides for the heritage council's advice to be taken into account in deciding whether to register a tree of heritage significance under that Act.

## Part 1.3 Land (Planning and Environment) Act 1991

### [1.4] Section 222, new definitions

*insert*

***damage*** a protected tree—see the *Tree Protection Act 2005*, section 12

***declared site***—see the *Tree Protection Act 2005*, dictionary.

***prohibited groundwork***—see the *Tree Protection Act 2005*, section 14.

***protected tree***—see the *Tree Protection Act 2005*, section 8.

***protection zone***, for a protected tree—see the *Tree Protection Act 2005*, section 11.

***registered tree***—see the *Tree Protection Act 2005*, dictionary.

***regulated tree***—see the *Tree Protection Act 2005*, dictionary.

***tree management plan***—see the *Tree Protection Act 2005*, dictionary.

**[1.5] New section 227 (1) (da) and (db)**

*insert*

- (da) each notice of a development application given to the conservator under section 229 (4) (b); and
- (db) each advice given to the planning and land authority by the conservator under the *Tree Protection Act 2005*, section 82 (Advice about tree protection on land subject to development); and

**[1.6] Section 227 (1)**

*renumber paragraphs when Act next republished under Legislation Act*

**[1.7] Section 229 (4) (b)**

*substitute*

- (b) must give the conservator—
  - (i) a copy of each application that relates to land that includes all or part of—
    - (A) the protection zone for a protected tree; or
    - (B) a declared site; and
  - (ii) if a tree management plan approved under the *Tree Protection Act 2005*, part 4, a proposed tree management plan, or a proposed amendment of a tree management plan, is included with the application—a copy of the plan or proposed plan or amendment; and
  - (iii) a statement that the application is referred to the conservator under this paragraph; and

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**[1.8] New section 229A (2A)**

*insert*

- (2A) The planning and land authority must give a copy of the direction to the conservator if the application relates to land that includes all or part of the tree protection zone for a protected tree or a declared site.

**[1.9] Section 229A (3) (a)**

*substitute*

- (a) the information and documents received by the authority in relation to the application, including—
- (i) any advice under the *Heritage Act 2004*, section 60 (Advice about effect of development on heritage significance); and
  - (ii) any advice under the *Tree Protection Act 2005*, section 82 (Advice about tree protection on land subject to development); and

**[1.10] Section 229A**

*renumber subsections when Act next republished under Legislation Act*

**[1.11] New section 229B (6) (ba)**

*insert*

- (ba) for an application mentioned in section 229A (2A)—ensure that the Minister has the advice of the conservator under the *Tree Protection Act 2005*, section 82 (Advice about tree protection on land subject to development); and

**[1.12] Section 229B (6)**

*renumber paragraphs when Act next republished under Legislation Act*

**[1.13] New section 231 (1) (ea)**

*insert*

- (ea) any advice given to the authority by the conservator under the *Tree Protection Act 2005*, section 82 (Advice about tree protection on land subject to development) within 30 working days after the day the conservator is given notice of the application by the authority;

**[1.14] New section 231 (3A) to (3D)**

*insert*

- (3A) The relevant authority must not make a decision under section 230 that is inconsistent with the advice of the conservator under the *Tree Protection Act 2005*, section 82 in relation to a registered tree or a declared site.
- (3B) The relevant authority may make a decision under section 230 that is inconsistent with the advice of the conservator under the *Tree Protection Act 2005*, section 82 in relation to a regulated tree only if the authority is satisfied, having regard to the broader strategic objectives of the territory plan, that all reasonable development options and design solutions have been considered to avoid or minimise the need to damage the tree or undertake prohibited groundwork.
- (3C) In making a decision under section 230 that relates to a regulated tree, the relevant authority may, under this section—
- (a) if a tree management plan is already in force for the tree—approve an amendment of, or replacement for, the tree management plan; or
  - (b) in any other case—approve a tree management plan for the tree.
- (3D) A decision mentioned in subsection (3B) must not be made by a person acting as delegate of the planning and land authority.

**[1.15] Section 231**

*renumber subsections and paragraphs when Act next republished under Legislation Act*

**[1.16] New section 244B**

*insert*

**244B Notice of decision to conservator**

If an application relates to land that includes all or part of the protection zone for a protected tree, or all or part of a declared site, the planning and land authority must give the conservator—

- (a) written notice of the decision to approve or refuse the application; and
- (b) a copy of the decision.

**[1.17] Section 254 (3) (e)**

*substitute*

- (e) if the order sought relates to the pruning of a tree that is a protected tree under the *Tree Protection Act 2005*—the conservator; and

*Note* For restrictions on pruning etc a protected tree, see the *Tree Protection Act 2005*.

**[1.18] Section 255 (2) (e)**

*substitute*

- (e) if the proposed order relates to the pruning of a tree that is a protected tree under the *Tree Protection Act 2005*—the conservator; and

*Note* For restrictions on pruning etc a protected tree, see the *Tree Protection Act 2005*.

**[1.19] Section 257 (3) (k), note**

*substitute*

*Note* For restrictions on pruning etc a protected tree, see the *Tree Protection Act 2005*.

**[1.20] Section 257A (f)**

*substitute*

(f) if the order relates to the pruning of a tree that is a protected tree under the *Tree Protection Act 2005*—the conservator; and

*Note* For restrictions on pruning etc a protected tree, see the *Tree Protection Act 2005*.

**[1.21] Dictionary, new definitions**

*insert*

***damage*** a protected tree, for part 6 (Approvals and orders)—see section 222.

***declared site***, for part 6 (Approvals and orders)—see section 222.

***prohibited groundwork***, for part 6 (Approvals and orders)—see section 222.

***protected tree***, for part 6 (Approvals and orders)—see section 222.

***protection zone***, for a protected tree, for part 6 (Approvals and orders)—see section 222.

***registered tree***, for part 6 (Approvals and orders)—see section 222.

***regulated tree***, for part 6 (Approvals and orders)—see section 222.

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## Part 1.4 Roads and Public Places Act 1937

### [1.22] New section 13 (5)

*insert*

- (5) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

*Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

## Part 1.5 Utilities Act 2000

### [1.23] New section 105 (5)

*insert*

- (5) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

*Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

### [1.24] New section 106 (3)

*insert*

- (3) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

*Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

**[1.25] New section 125 (8A)**

*insert*

- (8A) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

*Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

**[1.26] Section 125**

*renumber subsections when Act next republished under Legislation Act*

**[1.27] New section 225F (5)**

*insert*

- (5) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

*Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree



damaging activity or prohibited groundwork (including in urgent circumstances).

**[1.28] New section 225G (3)**

*insert*

- (3) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

*Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

**[1.29] New section 225X (9A)**

*insert*

- (9A) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

*Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

**[1.30] Section 225X**

*renumber subsections when Act next republished under Legislation Act*

## Dictionary

(see s 4)

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

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- appoint
- conservator of flora and fauna
- contravene
- exercise
- function
- heritage council
- planning and land authority
- public employee
- public servant.

***Aboriginal heritage tree***—a tree is an ***Aboriginal heritage tree*** if it is of particular significance to Aboriginal people because of either or both of the following:

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of any Aboriginal people of the area where the tree is located.

***advisory panel*** means the Tree Advisory Panel established under section 68.

***appeal***, in relation to a reviewable decision, means an application to the administrative appeals tribunal to review the decision.

***appeal period*** means the period within which an appeal may be made.

***approval criteria***—see section 21.

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

*at* premises includes in or on the premises.

*authorised person* means an authorised person under section 85.

*built-up urban area*—see section 7.

*cancellation criteria*—see section 45 (1).

*connected*, for part 12 (Enforcement)—see section 84.

*conservator* means the conservator of flora and fauna.

*damage* a protected tree—see section 12.

*declared site* means an area declared to be a declared site under section 61.

*development*, for part 11 (Land development applications)—see section 80.

*heritage significance*—see the *Heritage Act 2004*, section 10.

*incorporated document* means an instrument (or provision of an instrument) applied, adopted or incorporated by a statutory instrument under this Act.

*Land Act* means the *Land (Planning and Environment) Act 1991*.

*land management agency*, for land where a tree is located, means the entity responsible for managing the use of the land under a law of the Territory or Commonwealth.

*lopping*—see section 12.

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

*major pruning*—see section 13.

*occupier*, of premises, for part 12 (Enforcement)—see section 84.

*offence*, for part 12 (Enforcement)—see section 84.

*pollarding*—see section 12.

**premises** includes land.

**prohibited groundwork**—see section 14.

**protected tree**—see section 8.

**protection zone**, for a protected tree—see section 11.

**provisionally register** a tree means provisionally register the tree under section 52.

**register** a tree means register the tree under section 54.

**registered tree**—

- (a) for the Act—see section 9; but
- (b) for part 6 (Tree register)—see section 40.

**registration criteria**—see section 45 (1).

**regulated tree**—see section 10.

**representative Aboriginal organisation** means—

- (a) an organisation declared under the *Heritage Act 2004*, section 14 to be a representative Aboriginal organisation for that Act; or
- (b) an organisation prescribed by regulation for this definition.

**restricted information** means information restricted under section 63 (Restricted non-Aboriginal information) or section 64 (Restricted Aboriginal information).

**tree** includes a palm tree.

**tree management plan**—

- (a) a tree management plan approved under section 35; and
- (b) in parts 2 to 4—includes a tree management plan approved under the Land Act, section 231 (3C).

**tree management precinct**—see section 10 (3).

*tree protection direction*—see section 76.

*tree register*—see section 41.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 17 March 2005.

**2 Notification**

Notified under the Legislation Act on 29 September 2005.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Tree Protection Bill 2005, which was passed by the Legislative Assembly on 22 September 2005.

Clerk of the Legislative Assembly

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