

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

Tree Protection Bill 2005

EXPLANATORY STATEMENT

Circulated with the authority of  
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## EXPLANATORY STATEMENT

### Outline

The *Tree Protection (Interim Scheme) Act 2001* was introduced to control tree damaging activities while a permanent legislative and policy framework for urban tree protection was developed.

In October 2002, a discussion paper, *Tree Protection for the ACT - The Next Steps*, was released for public comment followed by direct briefings for key stakeholders. The paper analysed issues arising from 18 months experience with administration of the interim legislation with general discussion on tree protection and management issues. Possible options were presented for a permanent and workable tree protection regime with a view to establishing an appropriate and practicable balance between the protection needs of urban trees and the private activities of Canberrans within their leases.

The original Tree Protection Bill 2004 was tabled in the Legislative Assembly on 14 May 2004 but was not debated prior to the ACT elections on 16 October 2004. This Explanatory Statement is for the Tree Protection Bill 2005.

This Bill is to replace the Tree Protection (Interim Scheme) Act and sets out provisions for the protection of trees in the urban area. This Bill contains provisions for:

- establishment of a register of trees of high importance with appropriate levels of protection;
- establishment of comprehensive tree protection measures to be applied in areas where urban forest values are at risk of degradation;
- approval of tree damaging activities;
- approval of groundwork activities within the tree protection zone of a protected tree;
- approval of tree management plans;
- offence and enforcement provisions;
- ability for the Conservator of Flora and Fauna (the Conservator) to make directions with regard to tree protection matters; and
- establishment of a Tree Advisory Panel. (The Conservator is established under the *Nature Conservation Act 1980*).

### Revenue/Cost Implications

It is anticipated that the costs of administering the proposed scheme would be met from within recurrent funding arrangements. The timing for establishment of a Tree Register and progressive rolling back of comprehensive Canberra-wide tree protection will be dependent on resource availability. Two additional staff will see an operational Tree Register in 12-18 months. If existing resources are to be used, an operational Tree Register will take 3-4 years.

## Formal Clauses

### Part 1- Preliminary:

**Clause 1** is a formal requirement that defines the short title of the Bill.

**Clause 2** is a formal requirement that includes the commencement provisions. The Act is set to commence on a date fixed by the Minister.

**Clause 3** provides the objects of the Act. The primary objects stated in this clause are the protection of individual trees of importance and protection of urban forest values. Definitions of the *urban forest* and *urban forest values* are provided in Sub-Clause 3(2).

**Clause 4** provides for a dictionary of terms used within the Bill and notifies that the dictionary is located at the end of the Bill.

**Clause 5** advises that the notes included within the Bill are explanatory and do not form part of the Act.

**Clause 6** advises that this Bill is subject to other legislation, including the Criminal Code and Legislation Act.

**Clause 7** provides a definition of the built-up urban area as the area of land to which the Bill applies. The built up urban area is to be defined by reference to a map of Canberra and determined as a notifiable instrument.

### Part 2 – Important Terms

This Part defines the important terms used in the Bill. Many other definitions are included in the dictionary.

**Clause 8** defines a “protected tree” as referring to either a Registered or Regulated tree.

**Clause 9** defines a “registered tree” as a tree that is included on the register, including a provisionally registered tree.

**Clause 10** defines “regulated trees” and “tree management precincts.” A regulated tree is a tree that meets the size criteria specified in Sub-Clause 10(1) and is located on leased land in an area declared as a tree management precinct. A regulated tree is essentially the same as a significant tree under the *Tree Protection (Interim Scheme) Act 2001*.

**Clause 11** defines “protection zone for protected trees” as the area of ground extending two metres to the canopy extent of a protected tree and/or four metres from the trunk. A tree management plan for a protected tree, approved by the Conservator under Clause 33, may define the protection zone to be otherwise. The Tree Protection Zone for a regulated tree may also be defined by tree protection requirements as stated in an approved Development Application.

## Part 3 – Protection of Trees

The offence provisions in this bill are divided into the following categories:

- Damaging a protected tree;
- Undertaking major pruning of a protected tree;
- Undertaking prohibited groundwork within the Declared Site;
- Failing to comply with conditions stipulated in an approval to undertake a prohibited activity under the *Tree Protection Act 2005*.
- Failing to comply with tree protection conditions stipulated in a Development Application approved under the *Land (Planning and Environment) Act 1991*; and
- Undertaking prohibited groundwork within the protection zone of a protected tree.

### Division 3.1 - Definitions for part 3

**Clause 12** defines the meaning of *damage* to a protected tree.

**Clause 13** defines the meaning of *major pruning* as pruning that does not meet the criteria for *minor pruning* as specified in Sub-Clause 13(2). The definition of major pruning differs for regulated and registered trees. Major pruning of a regulated tree is defined as pruning that is not in accordance with the Australian Standard for Pruning of Amenity Trees (AS4374). The definition of major pruning for a registered tree is more comprehensive.

**Clause 14** defines the meaning of *prohibited groundwork* as a series of activities that involve disturbance of the soil within the protection zone of a protected tree or within a declared site.

### Division 3.2 – Prohibited activities

**Clause 15** establishes the offence of damaging protected trees. The question of whether a tree is a protected tree is a matter of strict liability. This is to reflect the policy that people should take care to ensure that trees they are working on are not protected, or that they have the relevant approvals to do the work. The maximum penalty for the offence depends on the level of the mental element the person had in relation to causing the damage. Intentional damage carries the most serious penalty, while the strict liability offence carries the lowest.

**Clause 16** establishes the offence of undertaking unauthorised groundwork within the tree protection zone of a protected tree or a declared site as defined under Clause 59. Again, the question of whether a tree is a protected tree is a matter of strict liability. Also, the question of whether the work was in the tree protection zone is a matter of strict liability. The maximum penalty for the offence depends on the level of the mental element the person had in relation to causing the damage. Intentional damage carries the most serious penalty, while the strict liability offence carries the lowest.

**Clause 17** provides for exceptions to clauses 15 and 16. Under this section it is not an offence to undertake any of the prohibited activities on a protected tree if:

- approval has been granted by the Conservator;
- damage done to a tree that has been removed from the Register on safety grounds;
- the activity is in accordance with a tree management plan approved under Clause 33;
- the activity is in accordance with a tree protection direction made under Clause 74;
- the activity is undertaken on a regulated tree and is in accordance with tree protection conditions stated in an approved Development Application under the *Land (Planning and Environment) Act 1991*;
- the activity is in accordance with a direction under the *Plant Diseases Act 2002*;
- activities undertaken on a regulated tree are in accordance with relevant sections of the *Utilities Act 2000*;
- activities undertaken on a protected tree are in accordance with a network protection notice (e.g. clearing branches from power lines);
- activities are undertaken in an emergency situation on a registered tree that are in accordance with relevant sections of the *Utilities Act 2000* and it is not possible to contact the Conservator to get an urgent circumstances approval; or
- activities are undertaken in an emergency situation on a registered tree that are in accordance with relevant sections of the *Emergencies Act 2004* to protect life or property.

The intention of the exception for activities done to a Regulated Tree in accordance with the *Utilities Act 2000* (Clause 17(1)(e)(i)) is to ensure that essential services, such as electricity, water and sewerage, are able to be maintained in a safe and reliable condition without unnecessary administrative requirements.

**Clause 18** establishes the offence of contravening conditions of development approval relating to protected trees. This provision makes it an offence to fail to comply with a tree protection related condition of a Development Application. This provision enables the Conservator to enforce Development Application conditions, such as the erection of protective fences around protected trees, regardless of whether an activity is occurring that meets the definition of ‘damage’ under Clause 12 or ‘prohibited groundwork’ under Clause 14.

### **Division 3.3 – Approved activities**

**Clause 19** empowers the Minister to determine criteria for the Conservator to approve tree damaging activities. The determination is to be a notifiable instrument.

**Clause 20** makes provisions for a person to apply to the Conservator for authority to undertake a tree damaging activity.

**Clause 21** provides for the Conservator to request further information required in order to reach a decision regarding approval of an application to undertake a tree damaging activity.

The Conservator may refuse to consider an application further if the applicant fails to comply with the request.

**Clause 22** enables the Conservator to request advice from the Tree Advisory Panel if necessary. A member of the panel who has been delegated by the panel under Clause 72 may provide this advice.

**Clause 23** provides for the Conservator to make a decision regarding an application to undertake a tree damaging activity and/or groundwork activities and provides for timeframes in which decisions are to be made and that conditions may be attached with approvals.

**Clause 24** requires the Conservator to notify specified interested persons of the decision and their right to request reconsideration within 14 days.

This provision is similar to that of the interim scheme with the exceptions that the definition of an adjoining lessee is limited to those situated within 100m of the tree and that notification may, in addition to the persons specified, be sent to any persons the Conservator consider appropriate.

It also directs the Conservator to notify the relevant land management agency, being the Department of the public service with responsibility for managing the relevant piece of unleased Territory land. This is relevant for the approval of activities regarding registered trees located on unleased Territory land.

**Clause 25** defines the operation of the approval, including when the approval takes effect and the period of the approval.

This is similar to the interim scheme except for:

- the additional provision that allows the Conservator to extend the period for which the approval remains in force providing the activity still meets the approval criteria; and
- limiting the time between the date of the decision and the start of the approval period to 14 days, as compared to 28 in the Interim Scheme. This is consistent with the time given for comments in the development application process under the *Land (Planning and Environment) Act 1991*.

**Clause 26** empowers the Conservator to cancel an approval if satisfied the activity no longer satisfies the criteria, providing interested persons are notified as per Clause 24.

**Clause 27** provides for the approval of tree damaging activities and prohibited groundwork in urgent circumstances or for minor works.

Circumstances are defined as urgent if the Conservator is satisfied that the activity is:

- required urgently in order to protect the health or safety of people or animals, or public or private property; or
- is considered to be ‘minor works’, i.e. it is unlikely to have an adverse impact upon the tree.

The urgent circumstances clause differs from the interim scheme in that it requires permission from the Conservator. In order to ensure that such a matter is addressed in an appropriately timely manner and at all hours, a delegate of the Conservator may provide approval orally and without delay. Delegation may be given to Environment Protection Officers who are on call 24 hours a day.

The minor works provision (sub-clause (4)) is necessary given the revised structure of the offence provisions. It is to allow permission to be granted for activities that may technically be prohibited, yet unlikely to have any significant impact on the health of the tree.

**Clause 28** establishes the offence of not complying with conditions attached to an approval under Clauses 23 or 27. This is to allow enforcement of conditions on an approval where breach of the conditions is not directly a tree damaging activity. An example of such a condition is the common requirement that tress not approved for removal be fenced prior to work commencing.

#### **Part 4 – Tree management plans**

This part of the Bill empowers the Conservator to approve a tree management plan. Approval of these plans will operate to give approval for tree damaging activities as set out in plan, in advance, without the need to make a new application for approval.

**Clause 29** empowers the Conservator to determine guidelines for the preparation and assessment of tree management plans. The guidelines would be a notifiable instrument.

**Clause 30** makes provision for a person to apply to the Conservator for approval of a tree management plan.

**Clause 31** provides for the Conservator to request further information required in order to reach a decision regarding approval of a tree management plan. The Conservator may refuse to consider an application further if the applicant fails to comply with the request.

**Clause 32** enables the Conservator to request advice on the approval of a tree management plan from the Tree Advisory Panel if necessary. This advice may be provided by a member of the panel who has been delegated by the panel under Clause 72.

**Clause 33** empowers the Conservator to make a decision regarding an application to undertake a tree damaging activity and/or groundwork activities. This decision must be made within a 30 day timeframe.

**Clause 34** requires the Conservator to notify specified interested persons of the decision. The list of persons to whom notices must be sent is the same as Clause 24.

**Clause 35** defines the operation of the approval of a tree management plan. This provision is similar to Clause 25.

## **Part 5 – Tree management precincts**

This part of the Bill provides specified areas of the city with a tree protection regime similar to the interim scheme. The criteria for the declaration of a Tree Management Precinct (a notifiable instrument) would be designed to enable the Minister to declare an area as a Tree Management Precinct based on the need to protect:

- the values associated with urban forest from possible degradation from high levels of development activity;
- the landscape contribution of trees in heritage areas; and
- provide protection for trees during the construction phase of greenfield and urban infill developments.

**Clause 36** empowers the Minister to determine criteria for the declaration of tree management precincts. The criteria would be a notifiable instrument.

**Clause 37** empowers the Minister to declare an area as a tree management precinct. The declaration would be a notifiable instrument.

Tree management precincts will be areas where the existing scheme for tree protection will continue to apply (with some refinements, as outlined in part 3: see the provisions relating to protection of regulated trees).

## **Part 6 –Tree Register**

**Clause 38** defines the meaning of “registered tree” for the purposes of this part of the Bill as not including a provisionally registered tree.

**Clause 39** establishes the Tree Register and the information and records that must be included in the Register.

**Clause 40** enables the Conservator to correct errors in the Register.

**Clause 41** Requires that the Tree Register be made available to the public.

**Clause 42** ensures that any information that is determined to be restricted information is not included in the register. See the explanation for Part 8 for more information on this provision.

## **Part 7 – Registration of trees**

### **Division 7.1 Criteria for registration etc.**

**Clause 43** empowers the Minister to determine criteria to register or cancel the registration of a tree. The criteria would be a notifiable instrument.

### **Division 7.2 Registration process**

**Clause 44** provides the requirements for a tree to be nominated to the register.



**Clause 45** empowers the Conservator to provisionally register a tree thereby protecting it whilst it is being considered for registration.

**Clause 46** sets out the required information to be recorded for a provisionally registered tree.

**Clause 47** requires the Conservator to notify specified interested persons of the decision regarding the provisional registration and proposed inclusion on the register.

This clause is similar to Clause 23 with the additional requirement to publish a notice in a daily paper inviting comment from the community regarding the proposed registration.

**Clause 48** provides for the Conservator to consider advice from the Tree Advisory Panel and/or Heritage Council (if the tree is proposed to be registered on the basis of heritage significance) and submissions received from the community.

The advice provided by the Tree Advisory Panel on the cancellation of the registration of a tree must be provided by the entire panel. This is in contrast to Clause 22 (Advisory panel advice on approval application) and Clause 32 (Advisory panel advice on proposed tree management plan) where the function may be delegated to an individual member of the panel under Clause 72.

**Clause 49** defines the period for provisional registration and criteria for ending provisional registration.

**Clause 50** empowers the Conservator to make a decision regarding the registration of a tree.

**Clause 51** requires the Conservator to notify specified interested persons of the decision regarding the registration of a tree as per Clause 45.

**Clause 52** provides for the registration of trees and the information required to be maintained on the register.

### **Division 7.3 – Cancellation of registration**

**Clause 53** provides the requirements for a proposal to cancel the registration of a tree.

**Clause 54** requires the Conservator to notify specified interested persons of the proposed cancellation of the registration of a tree as per Clause 45.

**Clause 55** provides for the Conservator to consult with the Tree Advisory Panel and Heritage Council and consider comments received from the community as per Clause 46. The advice provided by the panel on the cancellation of the registration of a tree must be provided by the entire panel as per Clause 48.

**Clause 56** empowers the Conservator to make a decision regarding the cancellation of the registration of a tree.

**Clause 57** requires the Conservator to notify specified interested persons of the decision to cancel the registration of a tree as per Clause 45.

**Clause 58** requires the Conservator, upon deciding to cancel the registration of a tree, to remove the entry pertaining to that tree from the register. The Conservator must retain the listing on the Register if the site is made a Declared Site under Clause 58 but must include a statement that the registration of the tree has been cancelled.

**Clause 59** provides for the Conservator to make an area a Declared Site if a Registered Tree is removed from the Register due to unauthorised human activity that is not subject to exemption under Clause 17. Such a declaration would prevent development activity within the site for up to five years unless approved by the Conservator. The intention of this clause is to remove incentive to poison, or otherwise kill, a registered tree in order to realise a development objective.

The decision to declare a site may be appealed to the Administrative Appeals Tribunal under Clause 109 by persons notified under Sub-Clause 59(4).

## **Part 8 – Restricted information**

This provision is in place to ensure the protection of the values of certain trees where the release of certain information may compromise those values. Examples of this include trees that have been registered for their Aboriginal cultural significance or trees that represent sensitive habitat for an endangered species.

**Clause 60** establishes what kind of protected tree this part applies to. The definition of a Registered Tree (Clause 9) includes trees that have been provisionally registered.

**Clause 61** defines how the Conservator defines restricted non-Aboriginal information and who should be given a copy of the declaration.

**Clause 62** defines how the Conservator determines restricted Aboriginal information and who should be given a copy of the declaration. It also provides a definition of what an *Aboriginal heritage* tree is.

**Clause 63** establishes the limitations and penalties regarding the publication of restricted information.

**Clause 64** empowers the Conservator to give an approval for the publication of restricted information providing there is no adverse impact resulting from the publication.

**Clause 65** provides for certain circumstances where specified persons may have access to restricted information.

## **Part 9 – Tree Advisory Panel**

This part of the Bill provides for the establishment of a panel of at least three persons expert in relevant fields. The Tree Advisory Panel will be responsible for providing advice to the Conservator with regard to specific functions of the Conservator as well as other matters pertaining to tree protection in general. The entire panel is required to provide advice on some

matters, as specified in Clause 72, whereas a majority of the panel's tasks may be delegated to a suitably qualified member of the panel.

**Clause 66** establishes the Tree Advisory Panel.

**Clause 67** provides for the appointment of members to the Tree Advisory Panel and sets out the eligibility requirements for its members. The panel members between them must include extensive experience in the fields of either: arboriculture; forestry; landscape architecture; natural and cultural heritage; or horticulture. At least one member must have extensive experience in arboriculture or forestry to ensure the panel has sufficient knowledge of issues relating to tree safety and growth habits.

**Clause 68** establishes the functions of the Tree Advisory Panel. This clause sets out specific circumstances for which the panel may provide advice and provides for the provision of advice on any matters pertaining to tree protection matters. The functions of the Panel include the provision of advice to the Conservator on:

- (a) application for approval of activities under Clause 22;
- (b) application for approval of Tree Management Plans under Clause 32;
- (c) proposed registration of a tree under Clause 48;
- (d) proposed cancellation of registration of a tree under Clause 55;
- (e) decision on making a declared site when considering cancelling the registration of a tree under Clause 56;
- (f) reconsideration of a decision by the Conservator under Clause 104; and
- (g) other tree protection matters.

The panel may delegate above functions (a), (b) and (g) to an individual member of the panel under clause 72. It is envisaged that these functions would constitute the majority of the functions exercised by the panel. This would be especially so during the transition from the interim scheme to permanent tree protection legislation.

**Clause 69** empowers the Minister to end the appointment of a member of the panel in accordance with provision of this section and the disclosure provisions in Clause 67.

**Clause 70** requires members of the panel to disclose and financial or personal interest they may have in any matter being considered by the panel and for the Conservator to report the stated interests to the Minister.

**Clause 71** provides for the making of regulations regarding the procedures for decision making by the panel and provides specific examples. These examples are not exhaustive and do not limit the meaning and provision of the related clause.

**Clause 72** Empowers the panel to delegate certain functions to individual members of the panel. This is to enable the efficient administration of the more routine decisions whilst ensuring that the entire panel is involved in providing advice on more important matters.

The panel may not delegate the provision of advice to the Conservator on the following matters:

- registration (Clause 48);
- cancellation of registration (Clause 55);
- declaration of a Declared Site under Clause 56; or
- reconsideration of a decision under Clause 104.

It also specifies that the panel may only delegate advice of a technical nature to suitably qualified members of the panel. The panel may, for example, include members who have expertise in the field of cultural heritage but do not have expertise in arboriculture or forestry.

## **Part 10 Tree protection directions**

The following sections provide for the Conservator to make directions with regard to the protection of trees.

**Clause 73** permits the Conservator to determine criteria for giving directions.

**Clause 74** empowers the Conservator to give directions with regard to the protection of trees.

**Clause 75** sets out the requirements for serving a direction, including in person to the owner or occupier, as a sign erected on the site or to a person undertaking an activity that may affect a protected tree.

**Clause 76** defines the offence of contravening a direction.

**Clause 77** sets out what an authorised officer may do in response to a situation where a direction has been contravened. This includes

- entering the land to fulfil the direction;
- recovering any costs associated with fulfilling the direction; and
- notification of the proposed action to the lessee or any other person the Conservator considers an interested person.

## **Part 11 Land Development Applications**

The following sections require the Conservator to provide advice to the Planning Authority with regard to development proposals that include protected trees.

The provision of this advice is to support the Planning Authority's capacity to make decisions regarding tree protection matters relating to protected trees that are subject to proposed Development Applications. This capacity is limited to approving a Development Application contrary the Conservator's advice only when, in light of broader planning objectives of the Territory Plan, all reasonable design options have been considered to avoid the need to undertake the proposed prohibited activity.

**Clause 78** defines the meaning of *development*, for the purposes of this part of the Act, as being a proposed activity subject to a Development Application.

**Clause 79** provides a simplified explanation of this part of the Act to assist interpretation.

**Clause 80** provides criteria for when the Conservator is able to provide advice to the Planning Authority and how that advice should be provided.

**Clause 81** sets out what information is to be included in the advice from the Conservator to the Planning Authority and what additional information the Conservator may also provide.

## **Part 11 – Enforcement**

### Division 11.1 – General

**Clause 82** defines the terms *connected*, *occupier* and *offence* for the purpose of the Bill.

### **Division 11.2 – Authorised people**

**Clause 83** empowers the chief executive to appoint authorised people for the Act.

**Clause 84** requires authorised persons to have identity cards and to produce them when appropriate.

### **Division 11.3 – Powers of authorised persons**

**Clause 85** empowers an authorised officer to enter premises either:

- with consent;
- with a warrant,
- in order to inspect a tree nominated to, or already on the register; or
- give a tree protection direction.

It is necessary for authorised officers to be able to enter premises without consent to access a tree for consideration for inclusion on the register or for inspection of a tree that is already on the register. A thorough assessment of the tree, required in order to consider the tree for registration, may not be possible without access to the lease. It is not appropriate to seek a warrant in this circumstance, as no offence has been committed.

**Clause 86** provides that an authorised person may only remain on premises if they produce an identity card when asked to do so.

**Clause 87** establishes the procedure required for an authorised person to obtain consent to entry, and the requirement for giving acknowledgement of that consent.

**Clause 88** empowers an authorised officer to enter premises in order to collect evidence and seize things and sets out the offence of not complying with a request made by an authorised officer for help in exercising this power.

**Clause 89** empowers an authorised officer to seize anything that is connected to an offence and defines the offence of interfering with a seized thing.

**Clause 90** empowers an authorised person to require a person to state their name and address in relation to, or on suspicion of, the committing of an offence under this Bill.

#### **Division 11.4 – Search warrants**

**Clause 91** empowers an authorised person to apply to a magistrate for a search warrant with regard to an offence under this Bill and establishes the process and requirements for the provision of a warrant.

**Clause 92** empowers an authorised person to apply by phone, fax, radio etc. to a magistrate for a search warrant in urgent or otherwise special circumstances.

**Clause 93** requires the authorised person to announce that they are entering the premises under a search warrant.

**Clause 94** requires the authorised person to provide the occupier, or someone else representing the occupier, with details of the search warrant.

**Clause 95** entitles the occupier to be present and observe whilst a search is being conducted.

#### **Division 11.5 – Return and forfeiture of things seized**

**Clause 96** requires that an authorised person to provide a receipt for any things seized.

**Clause 97** empowers an authorised person to move a thing found under a search warrant to another place for examination.

**Clause 98** entitles a person who, apart from the seizure, would otherwise be able to inspect a thing seized, to inspect or copy (if a document) the thing seized.

**Clause 99** requires that things seized be returned to its owner if it is shown to be irrelevant to the offence or the offence is not proven.

#### **Division 11.6 – Miscellaneous**

**Clause 100** requires that damage or inconvenience caused by an authorised person in their duties under this Bill be minimised.

**Clause 101** provides for a person to claim compensation for any loss or expense suffered due to the exercise of a function under this Bill.

## **Part 12 – Review of decisions**

This part of the Bill sets out the provisions for the formal reconsideration of decisions made by the Conservator. The reconsideration process involves an initial ‘in-house’ process involving the Tree Advisory Panel and the Conservator. It should be noted that neither roles may be delegated when exercising this function.

**Clause 102** requires the Conservator to include information about the reconsideration process when notifying persons of a decision that is subject to provisions contained in this part of the Bill.

**Clause 103** provides for persons to be able to apply for reconsideration of a decision and sets out which decisions for which an application may be made.

**Clause 104** empowers the Conservator to reconsider a decision and sets out the process for making such a reconsideration including requesting advice from the Advisory Panel.

**Clause 105** allows reconsidered decisions to be reviewed by the Administrative Appeals Tribunal.

Any person notified (under Clauses 24, 26, 34, 47, 51, 57 or 59) may request a reconsideration of a decision within 14 days of the date on the notice. If they, or any other notified person, are dissatisfied with the outcome of the reconsideration they are able to take the matter to the Administrative Appeals Tribunal within 21 days of the reconsideration.

## **Part 13 – Miscellaneous**

**Clause 106** provides that an executive officer of a corporation commits an offence where the corporation contravenes Clauses 15, 16, 27, 76 of the Act and, to broadly summarise, the officer could be said to be responsible for the breach. Sub-Clause 106(3) sets out the factors that a Court must have regard to in deciding whether the executive officer took or failed to take reasonable steps to prevent the corporation breaching the Act.

**Clause 107** is a standard provision providing the power to determine fees.

**Clause 108** is a standard provision empowering the Minister to approve forms for the Act. The approval is to be a notifiable instrument.

**Clause 109** provides for the delegation of the functions of the Conservator to a public employee, an authorised person or a person prescribed under regulations.

The Conservator’s functions regarding the registration, cancellation of registration and reconsideration of a decision cannot be delegated.

**Clause 110** enables statutory instruments under this Act to refer to instruments that are in force from time to time. An Australian Standard is an example of such a document.

**Clause 111** requires the Chief Executive to make any incorporated documents publicly available.

**Clause 112** requires the Chief Executive to notify any amendment or replacement to an incorporated document. An incorporated document is a notifiable instrument.

**Clause 113** empowers the Executive to make regulations for this Bill, including to create offences and fix penalties.

## **Part 14 – Transitional**

**Clause 114** defines the term *commencement day* as the day the Act commences and *old Act* as being the *Tree Protection (Interim Scheme) Act 2001*.

**Clause 115** repeals the *Tree Protection (Interim Scheme) Act 2001* and associated instruments.

**Clause 116** provides for the transfer of any individual trees currently included in the Register under *Heritage Act 2004* to the Tree Register.

**Clause 117** provides for the establishment of interim Tree Management Precincts for each suburb (district) across the urban area whilst the tree register is being established.

**Clause 118** provides for the continuation, extension or cancellation of any approval made under the interim scheme that are still active.

**Clause 119** empowers the Executive to make regulations with regard to the transition from the Interim Scheme to the new Act, including for any transitional measures not anticipated prior to the Act being passed by the Legislative Assembly.

**Clause 120** provides for amendments to be made to the Acts mentioned in the consequential amendments schedule.

**Clause 121** Provides for the expiration of the transitional arrangements.

## **Schedule 1 – Consequential amendments**

### **Part 1.1 Administrative Appeals Tribunal Act 1989**

Clauses 1.1 and 1.2 (sections 49A and 49B) set out the necessary amendments to the *Administrative Appeals Tribunal Act 1989*.

**Clause 1.3** (section 3A) sets out the necessary amendments to the *Heritage Act 2004*. This clause prevents the Heritage Council from placing an individual tree on the Heritage Register.

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

**Clause 1.4** (section 222) provides definitions in the *Land (Planning and Environment) Act 1991* (Land Act) in accordance with terminology used in the Tree Protection Bill 2005.



**Clause 1.5** (section 227 (1)(da) and (db)) requires the Planning Authority to keep a register of notice of Development Application referred to the Conservator on tree protection matters and subsequent advice received from the Conservator.

**Clause 1.6** (section 227(1)) is a standard clause instructing the renumbering of the amended sections of the Act when it is next republished.

**Clause 1.7** (section 229(4)(b)) substitutes an existing provision regarding the referral of Development Applications to the Conservator to require the Planning Authority to provide copies of any Development Application to the Conservator that includes part or all of the tree protection zone of a protected tree.

**Clause 1.8** (section 229A(2A)) is a new clause requiring the Planning Authority to notify the Conservator if a direction is made under the Land Act to refer an application that is subject to advice from the Conservator to the Minister under the call-in provision.

**Clause 1.9** (section 229A(3)(a)) extends an existing clause requiring the Planning Authority to notify the Heritage Council if relevant Development Applications are referred to the Minister to include notifying the Conservator in regard to the referral of tree protection related applications.

**Clause 1.10** (section 229A) is a standard clause instructing the renumbering of the amended sections of the Act when it is next republished.

**Clause 1.11** (section 229B(6)(ba)) is a new clause ensuring that, when a Development Application is referred under the call-in provisions, any advice provided by the Conservator under Clause 80 is provided to the Minister.

**Clause 1.12** (section 229B) is a standard clause instructing the renumbering of the amended sections of the Act when it is next republished.

**Clause 1.13** (section 231(1)(ea)) is a new clause requiring the Planning Authority to consider advice from the Conservator under Clause 80 when deciding on a Development Application.

**Clause 1.14** (section 231(3A) and (3B)) is a new clause that provides for the Planning Authority may make a decision inconsistent with advice from the Conservator under Clause 80 only if all design options have been considered to avoid or minimise the need to undertake the proposed prohibited activity. This decision is limited to the Chief Planning Executive and may not be delegated.

**Clause 1.15** (section 231) is a standard clause instructing the renumbering of the amended sections of the Act when it is next republished.

Clauses 1.16 to 1.19 (sections 254(3)(e), 255(2)(e), 257(3)(k), note and 257A(f)) amend existing clauses requiring the Planning Authority to notify the Conservator with regard to orders made under the Land Act to prune a protected tree. The amended wording better reflects the Tree Protection Bill 2005.

## **Part 1.4 Roads and Public Places Act 1937**

Clause 1.20 and accompanying note highlight that activities undertaken in accordance with an order made under the *Roads and Public Places Act 1937* to damage a Registered Tree is subject to the provisions of the *Tree Protection Act 2005*.

## **Part 1.5 Utilities Act 2000**

Clauses 1.21 through to 1.23 and 1.25 through to 1.27 (sections 1.5(5), 106(3), 125(8A), 225F(5), 225G(3) and 225X(9A) and accompanying notes highlight that activities undertaken in accordance with provisions of the *Utilities Act 2000* that may damage or constitute prohibited groundwork with regard to a Registered Tree is subject to the provisions of the *Tree Protection Act 2005*.

Clauses 1.24 and 1.28 (sections 125 and 225X) are standard clauses instructing the renumbering of the amended sections of the Act when it is next republished.

The Dictionary sets out the definitions for terminology used in the Bill.