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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT AMENDMENTS
TO THE
URBAN FOREST BILL 2022**

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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URBAN FOREST BILL 2022

INTRODUCTION

This supplementary explanatory statement relates to amendments to the Urban Forest Bill 2022 (the Bill) as presented to the Legislative Assembly.

On 3 August 2022, the Bill was introduced into the Legislative Assembly. The explanatory statement accompanying the Bill as introduced provides a detailed account of the provisions contained in the Bill and can be accessed at https://www.legislation.act.gov.au/b/db_66444/.

The Government amendments seek to further enhance the Territory's tree protection laws concerning the urban forest. The Government Amendments strengthen the framework under the Bill by:

- a. providing more time for industry and the community to be informed of the changes by delaying the commencement date by 6 months;
- b. balancing the tree damaging and prohibited groundwork exemptions for activities under utilities legislation to protect the most significant trees whilst facilitating utility service provision;
- c. specifying that applicants for approval in urgent circumstances or for minor works are to be notified of a decision on their application as soon as practicable;
- d. creating consistency by enabling anyone to propose a tree management plan for any protected tree;
- e. providing the Director-General or delegated officers with the power to enter premises to issue or fulfil tree reparation directions;
- f. amending the provision relating to the incorporation of documents to remove the ability to incorporate an Australian Standard in a way that displaces section 47(6) of the Legislation Act; and
- g. removing the power for the Executive to make regulations that contain offences of up to 10 penalty units.

These amendments are responsive to comments from the Justice and Community Safety in its Legislative Scrutiny Role and recommendations from the Standing Committee on Planning, Transport and City Services Inquiry into Urban Forest Bill 2022 Report 11.

CONSULTATION ON THE PROPOSED APPROACH

Consultation has been undertaken with key Government stakeholders including the Justice and Community Safety Directorate, the Environment, Planning and Sustainable Development Directorate in the development of the Urban Forest Bill. Transport Canberra and City Services (TCCS) also consulted with Icon Water and EvoEnergy on these matters during the public consultation period for the Bill.

No public consultation on the Government amendments has occurred. A communications strategy will be developed to support the introduction of the Bill. TCCS will also work closely with utility and other stakeholders to support implementation of the new Bill.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Government Amendments due regard was given to its compatibility with human rights as set out in the Human Rights Act 2004 (HRA).

Broadly, the Government amendments may be seen to engage with the following human rights:

- Section 9 - Right to life (promoted)
- Section 12 - Right to privacy and reputation (limits).

Right to Life

The Government amendments support the Bill in promoting the right to life. They seek to address the ACT Government's obligation to protect its citizens through maintaining and enhancing environmental conditions of Canberra society that impact on the right to life. The amendments support the ability of ACT Government to require and ensure that damaged trees are repaired or replaced so that their environmental benefits can be restored for the benefit of people in the ACT now and in the future.

Right to Privacy and Reputation

Nature of the right and the limitation

The Government amendments limit the Right to Privacy and Reputation. The Bill will impact on private life by providing the Director-General or delegated officers with powers of entry to premises to issue a tree reparation direction or undertake work to fulfil a tree reparation direction with which the recipient has failed to comply in accordance with section 50 of the Bill. This power does not extend to a part of the premises used only for residential purposes

Legitimate purpose

The objective to be achieved by the Bill is that all people protect regulated and registered trees on their properties and contribute towards having a resilient and sustainable urban forest with a tree canopy covering 30 percent of the Territory's existing and future urban area by 2045 and incorporate the values of trees and their protection into design and development decisions.

The power of the Director-General and delegated officers to issue a tree reparation direction (where a protected tree has been damaged) and to take actions to fulfil the tree reparation direction (if the recipient does not comply with the direction within the stated timeframe) are only effective if the Director-General or delegated officers have the accompanying power to enter the relevant premises for this purpose.

Rational connection between the limitation and the purpose

The objective of tree protection is furthered by allowing the Director-General or delegated officers to enter the relevant premises to issue and fulfil non-complied with tree reparation directions.

Proportionality

The limitations on the right to privacy are considered proportionate to the legitimate purpose of tree protection and increasing canopy coverage for the following reasons.

The Government amendments acknowledge the need to provide the Director-General or their delegated officers with powers of entry to premises to issue tree reparation directions, and to provide the Director-General and delegated officers with power to complete the required works to fulfil a tree reparation direction with which the recipient has failed to comply. These amendments ensure that the safeguards which apply to the entry of premises for other stated purposes in Part 7 of the Bill also apply to entry of premises for tree reparation purposes.

In instances where consent to enter is sought, there are protections guiding how this consent must be sought. For example, the authorised person must produce an identity card and explain important details such as the purpose of entry. Another protection is that consent, if given, must be recorded and can be challenged later in court. The authority to enter does not extend to a part of the premises that is used only for residential purposes and the actions the authorised officer can undertake when on a premises is limited to those actions set out in the Bill. Consent can also be withheld, meaning a warrant would need to be sought.

Authorised officers are also required by section 129 to minimise, as far as is practicable, inconvenience, detriment and damage in the exercise of their functions. Written notice must be given of damage caused and a person may seek compensation under section 130 for loss or expense suffered because of the exercise of functions under Part 7.

Climate Change Implications

A strong and resilient urban forest provides climate mitigation benefits, such as protection from heat island effects and reduced damage from storm surges as trees can provide protection to buildings and infrastructure.

CLAUSE NOTES

1

Proposed amendment to clause 2: Commencement.

Clause 1 provides for the commencement of the Act. This amendment substitutes the date in this clause so that Act commences on 1 January 2024.

2

Proposed amendment to clause 18 (1) (d): Exceptions – tree damaging and prohibited groundwork offences

Clause 18 sets out an exception from tree damaging and prohibited groundwork offences for anything done in accordance with tree management plans, tree protection direction and tree protection conditions of a development approval. This amendment adds that this exception also extends to anything done in accordance with a tree reparation direction. This ensures that a person who is issued a tree reparation direction may complete the directed works without committing an offence against section 16 or 17 of the Bill.

3

Proposed amendment to clause 18 (1) (e): Exceptions – tree damaging and prohibited groundwork offences

Clause 18 sets out an exception from tree damaging and prohibited groundwork offences for anything done in accordance with a plant pruning direction under section 31 of the *Public Unleased Land Act 2013*. This amendment better aligns this exemption with public land legislation by narrowing the exception to apply specifically to regulated trees. Under the *Public Unleased Land Act 2013* a tree protection approval must be in force before such a direction is issued to a tree owner in relation to a registered tree, however no such approval is required for a regulated tree as they were exempt under the *Tree Protection Act 2005*. Directions may not be issued in relation to other protected trees as the scope of plant pruning directions is limited to trees or other plants on leased land that are overhanging public unleased land and likely to obstruct or inconvenience anyone on the public unleased land.

4-6

Proposed amendment to clause 18 (1) (f)-(g): Exceptions – tree damaging and prohibited groundwork offences

Clause 18 also sets out exceptions tree damaging and prohibited groundwork offences for utilities work. This amendment refines the exceptions from tree damaging and prohibited groundwork that apply to activities undertaken in accordance with the *Utility Act 2000* and the *Utilities (Technical Regulation) Act 2014*.

The intention of the exception for activities done to a public or regulated tree in accordance with stated sections of the *Utilities Act 2000* or the *Utilities (Technical Regulation) Act 2014* 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.

The intention of the exception for activities done to a registered or remnant tree in accordance with stated sections of the *Utilities Act 2000* or the *Utilities (Technical Regulation) Act 2014* is to ensure that essential service actions for the purposes of protecting life or property are able to be undertaken in urgent situations.

7

Proposed amendment to clause 18 (2): Exceptions – tree damaging and prohibited groundwork offences

This amendment clarifies the meaning of remnant tree for the purposes of this section. Remnant trees as set out by this section only include remnant trees that are located outside of the built-up urban area. In effect, the remnant trees in the urban forest are those in future urban areas and areas that are the subjects of estate development plans.

Whilst trees that are remnants of the original vegetation may exist in other areas of the urban forest, these are protected as either public, regulated or registered depending on their location and whether or not they have been registered on the ACT Tree Register.

This ensures that the decision-making structure and processes are clear: the relevant Director-General is the decision-maker for all public trees in the built-up urban area and the Conservator of Fauna and Flora is the decision-maker for all other protected trees in the urban forest.

8

Proposed amendment to clause 24: Approval application – advisory panel advice

This amendment states that it is the Conservator of Fauna and Flora who may request advice from the tree advisory panel for tree damaging activity and prohibited groundwork applications. This power does not extend to the decision-maker for public trees (the relevant director-general) as such applications may only be made for trees on leased land.

9-11

Proposed amendments to clause 32: Approval in urgent circumstances or for minor works

These amendments specify that the decision-maker must inform the applicant of a decision on an application for approval in urgent circumstances or for minor works. Notice of this decision must be given as soon as practicable so that the applicant is aware of whether their application was successful or not. This ensures that where urgent circumstances exist and work is approved, the applicant is able to commence works in a timely manner befitting the urgency of the situation.

12

Proposed amendment to clause 48: Tree reparation directions

This clause clarifies that an authorised person may issue a tree reparation direction. This technical amendment aligns this sentence with best practice drafting and ensures it is clear that this section relates to any authorised person.

13

Proposed amendment to clause 50: Repair of damage etc by Territory

Clause 50 states that in cases where the person issued with a tree reparation direction fails to comply with it, the Territory may undertake the repair of damage or removal and replacement of the tree as specified in the direction and recover the reasonable cost of doing so.

This amendment sets out what an authorised person may do in response to a situation where a tree reparation 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 decision-maker considers an interested person.

14-16

Proposed amendments to clause 78: Tree management plans – proposal or application

Clause 78 allows the decision-maker to propose a tree management plan for any protected tree within the urban forest, including public, regulated, registered and remnant trees. This includes trees on leased and unleased land, trees in the built-up urban area and trees in future urban areas and areas that are subject to estate development plans.

Similarly, anyone may propose a tree management plan for any protected tree through applying in writing to the decision-maker. Where such an application relates to a tree on leased land, the application must include written evidence that the tree owner is informed about the application.

Consistent with other parts of the Act, the decision-maker for tree management plans for public trees is the Director-General and the decision-maker for tree management plans for other protected trees is the Conservator of Fauna and Flora.

17-18

Proposed amendments to clause 79: Tree management plans – more information for application

Clause 79 allows for further information to be requested where it is reasonably needed for an application in deciding on a tree management plan. These amendments ensure this power to request information is held by the relevant decision-maker for the protected tree.

19-20

Proposed amendments to clause 80: Tree management plans – assessment of tree

Clause 80 requires an assessment of a tree to be carried out to support a decision under clause 85. These amendments ensure this assessment must be carried out by the relevant decision-maker for the protected tree.

21-23

Proposed amendments to clause 82: Tree management plans – referral of proposal or application to other entity

Clause 82 requires the referral of applications for a tree management plan to other entities (as necessary) following an assessment of the tree/s. These amendments ensure this referral requirement applies to the relevant decision-maker for the protected tree.

24-25

Proposed amendments to clause 83: Tree management plans – time for referral entity to give advice

Clause 83 provides the timeframe given to other entities listed under clause 82 to provide advice on an application for a tree management plan. These amendments ensure that this advice is to be provided to the relevant decision-maker for the protected tree.

26-30

Proposed amendments to clause 85: Tree management plans – decisions

This clause allows for decision on an application for a tree management plan, provides the basis, and timeframes by which decisions are to be made, and allows for the setting of conditions on such a decision. These amendments ensure that this decision-making power rests with the relevant decision-maker for the protected tree.

31-34

Proposed amendments to clause 86: Tree management plans – notice of decisions

Clause 86 requires the notification of specified interested persons of the decision on a proposed tree management plan. These amendments ensure this requirement applies to the relevant decision-maker for the protected tree.

35

Proposed amendment to clause 87: Tree management plans - operation

This clause outlines that a tree management plan takes effect on the date the tree management plan is approved. This amendment specifies that this refers to the date the plan is approved by the relevant decision-maker for the protected tree.

36

Proposed amendment to clause 89: Tree management plans – doing groundwork in the protection zone

This clause requires a utility service to provide a tree management plan before undertaking groundwork within the tree protection zone of a protected tree. This amendment specifies that this plan must be provided to the relevant decision-maker for the protected tree.

37

Proposed amendment to clause 91: Definitions – div 5.2

This amendment introduces a definition for ‘authorisation’. This definition applies to this division of the Bill, which relates to tree bonds.

38-43

Proposed amendments to clause 92: Tree bond and tree bond agreements

Clause 92 provides the circumstances under which a Tree Bond Agreement may be required, and the documents required to establish an agreement. Amendment 39 inserts the proposal of or application for work approval under section 19 of the *Public Unleased Land Act 2013* as a circumstance under which a tree bond may be required. This ensures a consistent process for work permits and public unleased land permits which are both issued for activities on public land under the *Public Unleased Land Act 2013*.

Amendments 38 and 40-43 introduce the term ‘authorisation’ to refer to a tree management plan, a public unleased land permit, a work approval or a tree protection condition of a development approval. This definition allows for this group of authorisations to be referenced simply and consistently.

44

Proposed amendment to clause 93: Tree bond agreements – form and period

This amendment inserts the term ‘authorisation’ to refer to a permit, approval or condition of an approval listed in section 92 (1)(a). This creates simplicity and consistency in understanding which activities’ completion affects the maximum tree bond period.

45

Proposed amendment to clause 95: Tree bonds – release

This amendment inserts the term ‘authorisation’ to refer to a permit, approval or condition of an approval listed in section 92 (1)(a). This creates simplicity and consistency in understanding which activities’ completion affects the minimum tree bond period.

46-47

Proposed amendments to clause 114: power to enter premises

Clause 114 establishes that an authorised person may enter premises and the conditions under which this may occur. These amendments state that this power and these conditions also apply to an authorised person entering premises to issue or fulfil a tree reparation direction. This creates consistency with the powers and conditions relating to tree protection directions.

48

Proposed amendment to clause 142: Incorporation of documents

This clause removes subsection (2) permitted the displacement of section 47(6) of the Legislation Act in relation to the application, adoption or incorporation of an Australian Standard in a statutory instrument.

49

Proposed amendment to clause 144: Regulation-making power

This clause provides that the Executive may make regulations for this Act. This amendment removes the power for a regulation to create offences.

50

Proposed amendment to clause 316: Transitional regulations

This amendment removes the ability to create a regulation that modifies this part of the Act. Regulations may be made that prescribe transitional matters as is necessary and convenient, however such regulations may not alter the transitional part of the Act.

51

Proposed amendment to Dictionary

This amendment adds an additional definition for authorisation. This definition states that for division 5.2 of the Bill, which relates to tree bonds, authorisation is defined in section 92 (1) (a).