

2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Tree Protection Bill 2001

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2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Tree Protection Bill 2001

A Bill for

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

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

2001 011B

Part 1 Preliminary

1 Name of Act

5 This Act is the *Tree Protection Act 2001*.

2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

10 *Note 1* The provisions of an Act providing for its name and commencement automatically commence on its notification day (see *Legislation Act 2001*, s 75).

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 2001*, s 77 (1)).

15 *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 2001*, s 79).

3 Dictionary

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

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

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

30 *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 *Interpretation Act 1967*, s 11F and s 11G).

4 Notes

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

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

5 Cases where Act does not apply

This Act does not apply to—

- 10 (a) the removal of a tree in accordance with a development approval under the *Land (Planning and Environment) Act 1991*, part 6 (Approvals and orders), division 2 (Approvals), if the application for the development approval was made before the commencement of the *Tree Protection (Interim Scheme) Act 2001*; or
- 15 (b) the removal of a tree in accordance with a condition of the lease where the tree is located, if the condition was in force immediately before the commencement of the *Tree Protection (Interim Scheme) Act 2001*; or
- (c) a tree that is a pest plant under the *Land (Planning and Environment) Act 1991*.

Part 2 Protection of trees

6 Significant trees

- 5 (1) For this Act, each of the following is a *significant tree*:
- (a) a tree registered under division 4.2 (Registration);
 - (b) a tree provisionally registered under division 4.3 (Provisional registration).
- 10 (2) For this Act, a tree to which division 9.2 (Interim protection of significant trees) applies is also a *significant tree*.

7 Meaning of *damage* to a tree

- (1) In this Act:
- damage*, to a tree, means any of the following activities:
- (a) killing or destroying the tree;
 - 15 (b) removing the tree;
 - (c) lopping or topping the tree within the meaning of AS 4373;
 - (d) any other severing of a trunk, branch, limb or stem of the tree that adversely affects the health or appearance of the tree;
 - (e) any ground work in the protection zone for the tree that
 - 20 adversely affects the health of the tree;
 - (f) any other activity prescribed under the regulations.
- (2) In this section:
- ground work* means any of the following:
- (a) contaminating the soil;
 - 25 (b) compacting the soil or changing the natural ground level;
 - (c) digging a trench;

- (d) building or construction work.

8 Damaging significant trees prohibited

- (1) A person must not do anything that damages, or is likely to damage, a significant tree except in accordance with an approval.

5 Maximum penalty: 100 penalty units.

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

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

9 Notice of damage caused in urgent circumstances

- 15 (1) If a significant tree is damaged because of an act or omission of a person in the urgent circumstances mentioned in section 8 (2) (c), the person must give the conservator written notice of the damage within 21 days after the day it happened.

Maximum penalty: 10 penalty units.

- 20 (2) The notice must indicate the following:

- (a) the land where the tree was damaged and the location of the tree on the land;
- (b) the nature of the damage;
- (c) the circumstances of the urgency.

10 Regulations may prescribe exemptions

- 25 (1) The regulations may exempt a person from section 8 (Damaging significant trees prohibited) in relation to an activity prescribed under the regulations.

Part 2 Protection of trees

Section 11

- (2) An exemption is subject to any conditions prescribed under the regulations.

11 Damaging other trees on Territory land prohibited

5 A person must not, without reasonable excuse, damage a tree (other than a significant tree) on unleased Territory land or land occupied by the Territory.

Maximum penalty: 50 penalty units.

Part 3 Approved activities

Division 3.1 Register of approved activities

12 Conservator to keep register

- 5 (1) The conservator must keep a register of approved activities.
- (2) The register may be kept separately or with the register of significant trees.
- (3) The conservator may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.

10 13 Inspection of register

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

15 Division 3.2 Approvals

14 Criteria for approval

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

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

15 Application for approval

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

25 *Note 1* A fee may be determined under s 79 (Determination of fees) for this section.

Note 2 If a form is approved under s 80 (Approved forms) for this section, the form must be used.

16 Further information

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

17 Approval by conservator

- 15 (1) The conservator may, in writing, approve an activity to which an application relates only if satisfied on reasonable grounds that the activity meets the determined criteria for approval.
- (2) However, the conservator must ask the assessment committee for a report if the application relates to the killing, destruction or removal of a significant tree.
- (3) Also, the conservator may ask the assessment committee for a report if the application relates to any other damage to a significant tree.
- 20 (4) In making a decision on the application, the conservator must have regard to any report by the assessment committee requested under subsection (2) or (3).
- (5) An approval is subject to the conditions (if any) stated in the approval.

18 Registration of approval

- 25 (1) For each approval, the conservator must enter the following particulars in the register:
- (a) the name and address of the applicant;
- (b) the location of the tree to which the approval relates;

- (c) a description of the tree;
- (d) the activity approved;
- (e) any conditions to which the approval is subject;
- (f) the period of the approval.

5 **19 When approval takes effect**

- (1) An approval takes effect on the date stated in the notice of the approval given to the applicant under section 26 (Notice to interested people—approvals etc).
- 10 (2) The date of effect must be at least 28 days after the day the notice is given to the applicant.

20 Notice to assessment committee

The conservator must give the assessment committee written notice of—

- 15 (a) a decision to approve the killing, destruction or removal of a significant tree; or
- (b) a decision to approve any other damage to a significant tree, if the conservator asked the committee to report in relation to the application for approval.

21 Period of approval

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

22 Cancellation of approval

- 25 (1) The conservator may, in writing, cancel an approval if satisfied on reasonable grounds that the activity approved no longer satisfies the determined criteria for approval.
- (2) However, the conservator must ask the assessment committee for a report in relation to the proposed cancellation of an approval for the killing, destruction or removal of a significant tree.

- (3) Also, the conservator may ask the assessment committee for a report in relation to the proposed cancellation of an approval for any other damage to a significant tree.
- 5 (4) In making a decision to cancel an approval, the conservator must have regard to any report by the assessment committee requested under subsection (2) or (3) in relation to the proposed cancellation.

23 When cancellation takes effect

The cancellation of an approval takes effect—

- 10 (a) on the date stated in the notice of cancellation given under section 26 (Notice to interested people—approvals etc); or
- (b) if a later date of effect is stated in the notice—on that date.

Division 3.3 Notice of approval decisions etc

24 Notifiable decisions—approvals etc

15 Each of the following decisions of the conservator is a *notifiable decision*:

- (a) to approve, or refuse to approve, an activity under section 17 (Approval by conservator);
- (b) to impose conditions on an approval under section 17;
- 20 (c) to cancel, or refuse to cancel, an approval under section 22 (Cancellation of approval).

25 Interested people—approvals etc

Each of the following is an *interested person* in relation to a notifiable decision mentioned in section 24:

- 25 (a) a person who applied in writing to the conservator for the decision;
- (b) if that person is not the lessee of the land where the tree is located—the lessee;

- (c) the lessee of each lease that adjoins the lease where the tree is located.

26 Notice to interested people—approvals etc

- 5 (1) The conservator must give written notice of a notifiable decision to each interested person.
- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Part 4 Registration of significant trees

Division 4.1 Register of significant trees

5 **27 Conservator to keep register**

- (1) The conservator must keep a register of trees registered under this part.
- (2) The conservator may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.

10 **28 Inspection of register**

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

15 **Division 4.2 Registration**

29 Criteria for registration

- (1) The Minister may, in writing, determine criteria for the registration of a tree under this part.
- (2) A determination is a disallowable instrument.

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

30 Grounds for registration

- (1) The conservator may register a tree under this division only if satisfied on reasonable grounds that the tree satisfies the determined
25 criteria for registration.

- (2) However, the conservator must ask the assessment committee for a report on the proposed registration.
- (3) In making a decision about the registration, the conservator must have regard to the report by the assessment committee.

5 **31 Initiating registration**

The registration of a tree under this division may be initiated—

- (a) by the conservator; or
- (b) by anyone else, by written application to the conservator.

10 *Note 1* A fee may be determined under s 79 (Determination of fees) for an application under this section.

Note 2 If an application form is approved under s 80 (Approved forms) for this section, the form must be used.

32 Registration

15 To register a tree under this division, the conservator must enter in the register a photograph or other image of the tree and the following particulars in relation to the tree:

- (a) its location;
- (b) its botanical name;
- (c) any relevant horticultural information;
- 20 (d) a statement about the significance of the tree;
- (e) a description of its protection zone;
- (f) any guidelines for its care and protection.

33 Protection zone for registered tree

- 25 (1) Before registering a tree under this division, the conservator must, in writing, determine the protection zone for the tree.
- (2) The conservator may, in writing, redetermine the protection zone for a tree registered under this division.

- (3) In making a decision about the protection zone, the conservator must have regard to the report by the assessment committee about the registration of the tree.

34 When redetermination of protection zone takes effect

5 The redetermination of a protection zone for a tree registered under this division takes effect—

- (a) on the date stated in the notice of the redetermination given under section 46 (Notice to interested people—registration etc); or
10 (b) if a later date of effect is stated in the notice—on that date.

35 Cancellation of registration

- (1) The conservator may cancel the registration of a tree under this division if—
(a) the tree has been killed, destroyed or removed; or
15 (b) the conservator is satisfied on reasonable grounds that the tree no longer satisfies the determined criteria for registration.
(2) However, the conservator must ask the assessment committee for a report on the proposed cancellation.
(3) In making a decision about the cancellation, the conservator must
20 have regard to the report by the assessment committee.

36 When cancellation takes effect

The cancellation of the registration of a tree under this division takes effect—

- (a) on the date stated in the notice of the cancellation given under
25 section 46 (Notice to interested people—registration etc); or
(b) if a later date of effect is stated in the notice—on that date.

Division 4.3 Provisional registration

37 Grounds for provisional registration

This division applies—

- 5 (a) if—
- (i) an application for the registration of a tree under division 4.2 (Registration) has been made but not decided; or
 - (ii) the conservator is satisfied on reasonable grounds that a tree is likely to be damaged; and
- 10 (b) the conservator is satisfied on reasonable grounds that—
- (i) the tree is likely to satisfy the determined criteria for registration; and
 - (ii) provisional registration is necessary to protect the tree from damage.
- 15

38 Provisional registration

- (1) The conservator may provisionally register a tree by entering the following particulars in the register in relation to the tree:
- (a) sufficient information to enable it to be identified and located;
 - 20 (b) if practicable—
 - (i) its botanical name; and
 - (ii) any relevant horticultural information;
 - (c) a description of its protection zone;
 - (d) an indication that the registration is provisional;
 - 25 (e) the period of the provisional registration;
 - (f) any guidelines for its care and protection.
- (2) The conservator may provisionally register a tree more than once.

39 Protection zone for provisionally registered tree

- (1) The protection zone for a provisionally registered tree is—
- 5 (a) as determined under subsection (2); or
- (b) if there is no determined zone under subsection (2)—the area
 under the canopy of the tree and the 2m wide area surrounding
 the vertical projection of the canopy.
- (2) Before provisionally registering a tree, the conservator must, in
writing, determine the protection zone for the tree.
- 10 (3) The conservator may, in writing, redetermine the protection zone for
a provisionally registered tree.

40 When redetermination of protection zone takes effect

- The redetermination of a protection zone for a provisionally
registered tree takes effect—
- 15 (a) on the date stated in the notice of the redetermination given
 under section 46 (Notice to interested people—registration
 etc); or
- (b) if a later date of effect is stated in the notice—on that date.

41 Period of provisional registration

- 20 (1) The provisional registration of a tree is for 3 months beginning on
the day it is registered under this division.
- (2) However, the provisional registration of a tree ends if, within the 3
months—
- (a) the tree is registered under division 4.2 (Registration); or
- 25 (b) the conservator refuses an application for the registration of the
tree under division 4.2.

42 Cancellation of provisional registration

The conservator may cancel the provisional registration of a tree
if—

- (a) the tree has been killed, destroyed or removed; or
- (b) the conservator is satisfied on reasonable grounds that the tree does not satisfy, or is no longer likely to satisfy, the determined criteria for registration.

5 **43 When cancellation takes effect**

The cancellation of the provisional registration of a tree takes effect—

- (a) on the date stated in the notice of the cancellation given under section 46 (Notice to interested people—registration etc); or
- 10 (b) if a later date of effect is stated in the notice—on that date.

Division 4.4 Notice of registration decisions etc

44 Notifiable decisions—registration etc

Each of the following decisions of the conservator is a *notifiable decision*:

- 15 (a) to register, or refuse to register, a tree under section 32 (Registration);
- (b) determining a protection zone under section 33 (Protection zone for registered tree);
- 20 (c) redetermining, or refusing to redetermine, a protection zone under section 33 (Protection zone for registered tree);
- (d) to cancel, or refuse to cancel, the registration of a tree under section 35 (Cancellation of registration) on the ground that it no longer satisfies the determined criteria for registration;
- 25 (e) to register a tree provisionally under section 38 (Provisional registration);
- (f) determining a protection zone under section 39 (Protection zone for provisionally registered tree);

- (g) redetermining, or refusing to redetermine, a protection zone under section 39 (Protection zone for provisionally registered tree);
- 5 (h) to cancel, or refuse to cancel, the provisional registration of a tree under section 42 (Cancellation of provisional registration) on the ground that it does not satisfy, or is no longer likely to satisfy, the determined criteria for registration.

45 Interested people—registration etc

10 Each of the following is an *interested person* in relation to a notifiable decision mentioned in section 44:

- (a) a person who applied in writing to the conservator for the decision;
- (b) if that person is not the lessee of the land where the tree is located—the lessee;
- 15 (c) the lessee of each lease that adjoins the lease where the tree is located.

46 Notice to interested people—registration etc

- (1) The conservator must give written notice of a notifiable decision mentioned in section 44 to each interested person.
- 20 (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

47 Registration notices

25 If a notifiable decision is for the registration or provisional registration of a tree, the notice under section 46 must set out the following:

- (a) the particulars entered in the register in relation to the tree;

- (b) a statement to the effect that it is an offence to damage the tree except in accordance with an approval;
- (c) guidelines for the care and protection of the tree.

Part 5 Significant Tree Assessment Committee

Division 5.1 Establishment and membership

5 **48 Establishment of committee**

The Significant Tree Assessment Committee is established.

49 Members

(1) The assessment committee consists of the following members appointed by the Minister:

- 10 (a) a chairperson;
 (b) a deputy chairperson;
 (c) 1 ordinary member.

(2) Before appointing a member of the committee, the Minister must ensure that, collectively, the members have qualifications or experience in the following fields:

- 15 (a) arboriculture;
 (b) natural and cultural heritage;
 (c) landscape architecture.

(3) A public servant is not eligible to be a member.

20 *Note 1* A member may be reappointed if eligible for appointment (see *Interpretation Act 1967*, s 28 (3) (c) and dict, def of **appoint**).

Note 2 The power to appoint a member includes a power to appoint a person to act in the position of the member (see *Interpretation Act 1967*, s 28 (4)-(6) and s 28A).

25 **50 Period of appointment**

(1) A member of the assessment committee may not be appointed for a period longer than 3 years.

- (2) The instrument appointing, or evidencing the appointment of the chairperson, deputy chairperson or ordinary member must state—

- (a) the position to which the appointment is made; and
(b) the period of the appointment.

5 **51 Ending appointments**

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

- 10 (a) if the member is absent from 3 consecutive meetings of the committee without reasonable excuse or leave by the Minister;
 or
 (b) for contravening section 55 (Disclosure of interests by members); or
 (c) for misbehaviour or physical or mental incapacity.

15 *Note* An appointed member's appointment also ends if the member resigns (see *Interpretation Act 1967*, s 28 (8) and (9)).

52 Conditions of appointment

A member of the assessment committee holds the position on the conditions not provided by this Act or another Territory law that are decided by the Minister.

20 **Division 5.2 Proceedings**

53 Time and place of meetings

- (1) The assessment committee is to meet at the times and places it decides.
(2) However, the committee must meet at least 4 times a year.
25 (3) The chairperson—
 (a) may at any time call a meeting of the committee; and

(b) must call a meeting of the committee if asked to do so by the conservator or the other 2 members.

(4) If the chairperson is not available to call a meeting for any reason, the deputy chairperson may call a meeting of the committee.

5 **54 Procedures governing proceedings**

(1) The chairperson of the assessment committee presides at all meetings of the committee at which the chairperson is present.

(2) If the chairperson is absent, the deputy chairperson presides.

10 (3) Business may be carried out at a meeting of the committee only if at least 2 members are present.

(4) At a meeting of the committee each member has a vote on each question to be decided.

15 (5) A question is to be decided by a majority of the votes of the members present and voting but, if the votes are equal, the question is decided in the negative.

(6) The committee may hold meetings, or allow members to take part in meetings, by telephone, closed-circuit television or another form of communication.

20 (7) A member who takes part in a meeting conducted under subsection (6) is taken to be present at the meeting.

(8) A resolution of the committee is a valid resolution, even though it was not passed at a meeting of the committee, if—

(a) all members agree, in writing, to the proposed resolution; and

25 (b) notice of the resolution is given under procedures decided by the committee.

(9) The committee must keep minutes of its meetings.

(10) The committee may conduct its proceedings (including its meetings) as it otherwise considers appropriate.

55 Disclosure of interests by members

- (1) This section applies to a member of the assessment committee if—
- (a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the committee;
5 and
 - (b) the interest could conflict with the proper exercise of the member's functions in relation to the committee's consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the member's
10 knowledge, the member must disclose the nature of the interest to a meeting of the committee.
- (3) The disclosure must be recorded in the committee's minutes and, unless the committee otherwise decides, the member must not—
- (a) be present when the committee considers the issue; or
15
 - (b) take part in a decision of the committee on the issue.
- (4) Within 14 days after the end of each financial year, the chairperson must give the Minister a statement of any disclosure of interest made under this section during the financial year.

Part 6 Enforcement

Division 6.1 General

56 **Meaning of *occupier* for pt 6**

5

In this part:

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.

10

57 **Things connected with offences**

(1) For this part, a thing is *connected* with a particular 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, for the purpose of committing the offence.

15

(2) A reference in this part to an *offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

Division 6.2 Authorised persons

20

58 **Appointment of authorised persons**

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

(2) A person must not be appointed as an authorised person unless—

- (a) the person is an Australian citizen or a permanent resident of Australia; and

25

- (b) the chief executive has certified in writing that, after appropriate inquiry, the chief executive is satisfied on reasonable grounds that the person is suitable for appointment, having regard in particular to—
- 5 (i) whether the person has any criminal convictions; and
- (ii) the person's employment record; and
- (c) the chief executive has certified in writing that the person has satisfactorily completed adequate training to exercise the powers of an authorised person proposed to be given to the
- 10 person.

59 Identity cards

- (1) The chief executive must issue an authorised person with an identity card that states the person's name and appointment as an authorised person, and shows—
- 15 (a) a recent photograph of the person; and
- (b) the date of issue of the card; and
- (c) the date of expiry for the card; and
- (d) anything else prescribed under the regulations.
- (2) A person must, within 7 days after ceasing to be an authorised
- 20 person, return the identity card to the chief executive.
- Maximum penalty (subsection (2)): 1 penalty unit.

Division 6.3 Powers of authorised persons

60 Power to enter premises

- (1) For this Act, an authorised person may—
- 25 (a) enter any premises at any time with the occupier's consent; or
- (b) enter premises in accordance with a warrant under this part.

- (2) An authorised person may, without the occupier's consent, enter the land around premises to ask for consent to enter the premises.

61 Production of identity card

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

62 Consent to entry

- 10 (1) When seeking the consent of an occupier for entering premises under this part, an authorised person must—
- (a) produce his or her identity card; and
- (b) tell the occupier—
- (i) the purpose of the entry; and
- 15 (ii) that anything found and seized under this part may be used in evidence in court; and
- (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment—
- (a) that the occupier was told—
- 20 (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
- 25 (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.

- 5 (4) A court must presume that an occupier of premises did not consent to an entry to the premises by an authorised person under this part if—
- (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
 - (b) an acknowledgment under this section is not produced in evidence for the entry; and
 - (c) it is not proved that the occupier consented to the entry.

63 Warrants

- 10 (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.
- 15 (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—
- 20 (a) there is a particular thing or activity (the *evidence*) connected with an offence against this Act; and
- (b) the evidence is at the premises, or may be at the premises, within the next 14 days.
- (5) The warrant must state—
- 25 (a) that an authorised person may, with necessary help and force, enter the premises and exercise the authorised person's powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and

- (d) the hours when the premises may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

64 Warrants—application made other than in person

- 5 (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.
- 10 (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.
- 15 (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
 - (a) the magistrate must—
 - (i) tell the authorised person what the terms of the warrant are; and
 - 20 (ii) tell the authorised person the date and time the warrant was issued; and
 - (b) the authorised person must complete a form of warrant (*warrant form*) and write on it—
 - (i) the magistrate's name; and
 - 25 (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.

-
- 5 (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.
- 10 (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must presume that a power exercised by an authorised person was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
- 15 (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.

65 General powers on entry to premises

- 20 (1) An authorised person who enters premises under this part may, for this Act, do any of the following in relation to the premises or anything on the premises:
- (a) inspect or examine;
- (b) take measurements or conduct tests;
- (c) take samples of or from anything on the premises;
- 25 (d) take photographs, films, or audio, video or other recordings;
- (e) subject to section 67 (Power to seize evidence), seize a thing;
- (f) require the occupier, or a person on the premises, to give the authorised person reasonable help to exercise a power under this part.

- (2) A person must not, without reasonable excuse, contravene a requirement under paragraph (1) (f).

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

66 Power to require name and address

- 5 (1) An authorised person may require a person to state the person's name and address if the authorised person—
- (a) finds a person committing an offence against this Act; or
 - (b) has reasonable grounds for believing that a person has just committed an offence against this Act.
- 10 (2) In exercising a power under subsection (1), an authorised person must—
- (a) tell the person the reasons for the requirement; and
 - (b) as soon as practicable, record those reasons.
- 15 (3) A person must not, without reasonable excuse, contravene a requirement under subsection (1).
- Maximum penalty: 5 penalty units.
- (4) However, a person is not required to comply with a requirement under subsection (1) if, on request by the person, the authorised person does not produce his or her identity card.

20 67 Power to seize evidence

- (1) An authorised person who enters premises under a warrant under this part may seize the evidence for which the warrant was issued.
- (2) An authorised person who enters premises under this part with the occupier's consent may seize a thing on the premises if—
- 25 (a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when seeking the occupier's consent.

- (3) An authorised person may also seize anything on premises entered under this part if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an authorised person may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person must not, without the chief executive's approval, interfere with a thing to which access has been restricted under subsection (4).
- Maximum penalty (subsection (5)): 50 penalty units, imprisonment for 6 months or both.

68 Receipt for things seized

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

69 Access to things seized

- A person who would, apart from the seizure, be entitled to a thing seized under this part may—
- (a) inspect it; and
 - (b) if it is a document—take extracts from it or make copies of it.

70 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
- 5 (a) a prosecution for an offence relating to the thing is not begun within 90 days after the day of the seizure; or
- (b) the court does not find the offence proved in a prosecution for an offence relating to the thing.
- (2) A thing seized under this part is forfeited to the Territory if a
- 10 court—
- (a) finds an offence relating to the thing to be proved; and
- (b) orders the forfeiture.
- (3) If subsection (2) (a) applies, but a court does not order the forfeiture of the thing seized, the chief executive must return the thing to its
- 15 owner or the Territory must pay reasonable compensation to the owner for the loss of the thing.

Division 6.4 Miscellaneous

71 Selfincrimination etc

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

- 5 (a) an offence against section 73 (Providing false or misleading information) or section 74 (Providing false or misleading documents); or
- (b) any other offence in relation to the falsity of the information or document; or
- (c) an offence against the *Crimes Act 1900*, part 8 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to an offence mentioned in paragraph (a) or (b).

72 Legal professional privilege

10 In response to a requirement under this part, a person does not have to—

- (a) make available information or a document; or
- (b) answer a question;

15 if the person is entitled to claim, and does claim, legal professional privilege in relation to the requirement.

73 Providing false or misleading information

A person must not, in purported compliance with a requirement under this part, knowingly give information that is false or misleading in a material particular.

20 Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

74 Providing false or misleading documents

25 A person must not, in purported compliance with a requirement under this part, produce a document (or a copy of a document) that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

75 Hindering or obstructing authorised person

A person must not, without reasonable excuse, hinder or obstruct an authorised person in the exercise of a function under this Act.

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

76 Damage etc to be minimised

10 (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as is practicable.

15 (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person whom the authorised person believes on reasonable grounds is the owner of the thing.

(3) If the damage happens on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

20 **77 Compensation**

(1) A person may claim reasonable compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person or a person assisting an authorised person.

25 (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.

- 5 (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Part 7 Review of decisions

78 Review by administrative appeals tribunal

- 5 (1) Only an interested person under section 25 (Interested people—
 approvals etc) may apply to the administrative appeals tribunal for
 review of a notifiable decision mentioned in section 24 (Notifiable
 decisions—approval etc).
- 10 (2) Only an interested person under section 45 (Interested people—
 registration etc) may apply to the administrative appeals tribunal for
 review of notifiable decision mentioned in section 44 (Notifiable
 decisions—registration etc).

Part 8 Miscellaneous

79 Determination of fees

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

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

- (2) A determination is a disallowable instrument.

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

80 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.

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

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

81 Delegation of conservator's functions

- (1) The conservator may, in writing, delegate the conservator's functions under this Act to—
- 20 (a) a public employee; or
- (b) an authorised person; or
- (c) a person prescribed under the regulations.
- (2) However, the conservator may not delegate any of the following functions:
- 25 (a) to approve the killing, destruction or removal of a significant tree;
- (b) to register, or refuse to register, a tree under division 4.2.

82 Regulation-making power

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

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

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

Part 9 **Transitional provisions**

Division 9.1 **Repeal of Tree Protection (Interim Scheme) Act 2001**

5 **83 Repeal**

The *Tree Protection (Interim Scheme) Act 2001* is repealed.

84 Survival of approvals etc under repealed Act

(1) In this section:

10 *interim significant tree* means a significant tree to which division 9.2 (Interim protection of significant trees) applies.

(2) Despite the repeal of the *Tree Protection (Interim Scheme) Act 2001* (the *repealed Act*), the following provisions have effect:

15 (a) determined criteria (for approving an activity) that were in force under the repealed Act are taken, after the commencement of this part, to be determined criteria for approving the activity under this Act;

20 (b) an application for the approval of an activity that was made but not decided under the repealed Act, is taken, after the commencement of this part, to be an application for the approval of the activity under this Act in relation to an interim significant tree;

25 (c) an approval of an activity that was in force under the repealed Act is taken, after the commencement of this part, to be an approval of the activity under this Act in relation to an interim significant tree for the remainder of the period for which the approval was given.

Division 9.2 Interim protection of unregistered, significant trees

85 Unregistered significant trees

- (1) This division applies to the following significant trees:
- 5 (a) a eucalypt that is on leased land and has a trunk with a circumference of 2.5m or more, 1m above natural ground level;
- (b) a eucalypt that is on leased land and has 2 or more trunks and—
- 10 (i) the total of the circumferences of all the trunks, 1m above natural ground level, is 2.5m or more; and
- (ii) the average of the trunk circumferences, 1m above natural ground level, is 0.75m or more;
- (c) a tree of any other species that is on leased land and—
- 15 (i) is 12m or more high; or
- (ii) has a trunk with a circumference of 1.5m or more, 1m above natural ground level; or
- (iii) has a canopy 12m or more wide;
- (d) a tree prescribed under the regulations.
- 20 (2) However, this division does not apply to any of the following trees:
- (a) a tree registered under division 4.2 (Registration);
- (b) a tree for which an application for registration under division 4.2 has been refused by the conservator, and the refusal has not been set aside;
- 25 (c) a tree whose registration under division 4.2 has been cancelled.
- (3) In this section:
- leased land* means leased Territory land, other than land leased for rural purposes, or purposes including rural purposes.

86 Protection zone for unregistered significant tree

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

5 **Division 9.3 Expiry**

87 Expiry

(1) This part expires—

(a) 1 year after it commences; or

10 (b) if a later expiry date is fixed by regulations made within the year—on that date.

(2) Section 6 (2) (Significant trees) expires when this part expires.

Part 10 Consequential Amendments

88 Schedule 1

5 Schedule 1 amends the Acts mentioned in the schedule.

Schedule 1 Consequential amendments of other laws

(see s 88)

5 **Part 1 Land (Planning and Environment) Act 1991**

[1.1] Section 229 (4) (aa)

substitute

- 10 (aa) must give the conservator a copy of each application that
involves, or is likely to involve, damage to a significant tree
under the *Tree Protection Act 2001*; and

[1.2] Section 229

*renumber subsections when Act next republished under Legislation
Act 2001*

Part 2 Trespass on Territory Land Act 1932

[1.3] Section 7

5 *substitute*

7 Damaging plants, plantations etc

A person must not, without reasonable excuse, damage or destroy a
plant, garden, plantation or afforestation area on unleased Territory
land or land occupied by the Territory.

10 Penalty: 50 penalty units.

Dictionary

(see s 3)

- 5 **approval**—means an approval under section 17 (Approval by conservator).
- AS 4373** means the Australian Standard entitled ‘AS 4373-1996 Pruning of amenity trees’, as in force from time to time.
- assessment committee** means the Significant Tree Assessment Committee under part 5.
- 10 **authorised person**—means a person who is appointed as an authorised person under section 58 (Appointment of authorised persons).
- connected** with an offence, for part 6 (Enforcement)—see section 57 (Things connected with offences).
- 15 **conservator**—means the conservator of flora and fauna.
- damage**, to a tree—see section 7 (Meaning of *damage* to a tree).
- determined criteria** means—
- (a) for approval—the criteria determined under section 14 (Criteria for approval); or
- 20 (b) for registration—the criteria determined under section 29 (Criteria for registration).
- interested person**—
- (a) for a notifiable decision in relation to an approval—see section 25 (Interested people—approvals etc); or
- 25 (b) for a notifiable decision in relation to registration, provisional registration or a protection zone—see section 45 (Interested people—registration etc).

notifiable decision—

- (a) in relation to an approval—see section 24 (Notifiable decisions—approvals etc); or
- 5 (b) in relation to registration, provisional registration or a protection zone—see section 44 (Notifiable decisions—registration etc).

occupier, for part 6 (Enforcement)—see section 56 (Meaning of ***occupier*** for pt 6).

10 ***offence***, for part 6 (Enforcement)—see section 57 (Things connected with offences).

premises includes land.

protection zone means—

- (a) for a registered tree—the protection zone determined under section 33 for the tree; or
- 15 (b) for a provisionally registered tree—the protection zone under section 39 for the tree; or
- (c) for an unregistered significant tree—the protection zone under section 86 for the tree.

provisional registration means registration under division 4.3.

20 ***register*** means—

- (a) for an approved activity—the register kept under section 12 (Conservator to keep register); or
- (b) for a significant tree—the register kept under section 27 (Conservator to keep register).

25 ***significant tree***—see section 6 (Significant trees).

Endnote

Penalty units

The Interpretation Act 1967, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.

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