

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Environment)

Tree Protection Bill 2004

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2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Environment)

Tree Protection Bill 2004

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Tree Protection Act 2004*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Objects of Act**

9 (1) The objects of this Act are—

- 10 (a) to protect individual trees in the urban area that have
11 exceptional qualities because of their natural and cultural
12 heritage values or their contribution to the urban landscape;
13 and
- 14 (b) to protect urban forest values that may be at risk because of
15 unnecessary loss or degradation; and
- 16 (c) to protect urban forest values that contribute to the heritage
17 significance of an area; and
- 18 (d) to ensure that trees of value are protected during periods of
19 construction activity; and
- 20 (e) to promote the incorporation of the value of trees and their
21 protection requirements into the design and planning of
22 development; and
- 23 (f) to promote a broad appreciation of the role of trees in the urban
24 environment and the benefits of good tree management and
25 sound arboricultural practices.

(2) In this section:

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

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

4 Dictionary

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

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

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

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

5 Notes

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

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

- 1 **6 Offences against Act—application of Criminal Code etc**
- 2 Other legislation applies in relation to offences against this Act.
- 3 *Note 1 Criminal Code*
- 4 The Criminal Code, ch 2 applies to all offences against this Act (see
- 5 Code, pt 2.1).
- 6 The chapter sets out the general principles of criminal responsibility
- 7 (including burdens of proof and general defences), and defines terms
- 8 used for offences to which the Code applies (eg *conduct*, *intention*,
- 9 *recklessness* and *strict liability*).
- 10 *Note 2 Penalty units*
- 11 The Legislation Act, s 133 deals with the meaning of offence penalties
- 12 that are expressed in penalty units.
- 13 **7 Application of Act—built-up urban areas**
- 14 (1) This Act applies to trees on land in built-up urban areas.
- 15 (2) A *built-up urban area* is an area of land declared, in writing, by the
- 16 Minister to be a built-up urban area for this Act.
- 17 (3) A declaration is a disallowable instrument.
- 18 *Note* A disallowable instrument must be notified, and presented to the
- 19 Legislative Assembly, under the Legislation Act.

Part 2 Important terms

8 Protected trees

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

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

9 Registered trees

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

10 Regulated trees and tree management precincts

- (1) A *regulated tree* is a living tree (other than a registered tree or a palm tree) that is on leased land within a tree management precinct and—
 - (a) is 12m or more high; or
 - (b) has a trunk with a circumference of 1.5m or more, 1m above natural ground level; or
 - (c) has 2 or more trunks and the total circumference of all the trunks, 1m above natural ground level, is 1.5m or more; or
 - (d) has a canopy 12m or more wide.
- (2) However, a tree is not a regulated tree if it is declared to be a pest plant under the *Land (Planning and Environment) Act 1991*, section 261.
- (3) A *tree management precinct* is an area declared under part 5 to be a tree management precinct.

- 1 (4) In this section:
- 2 *leased land* means leased Territory land, other than land leased for
- 3 rural purposes, or purposes including rural purposes.
- 4 **11 Protection zone for protected tree**
- 5 (1) The *protection zone* for a protected tree is—
- 6 (a) the area under the canopy of the tree; and
- 7 (b) the 2m wide area surrounding the vertical projection of the
- 8 canopy; and
- 9 (c) the 4m wide area surrounding the trunk as measured at 1m
- 10 above natural ground level.
- 11 (2) However, if another protection zone is defined in a tree management
- 12 plan in force for the protected tree, that protection zone is the
- 13 *protection zone* for tree.

1 **Part 3** **Protection of trees**

2 **Division 3.1** **Definitions for pt 3**

3 **12** **Meaning of *damage***

4 In this part:

5 *damage*, a protected tree, includes the following:

- 6 (a) killing or destroying the tree;
- 7 (b) poisoning the tree;
- 8 (c) ringbarking the tree (whether partially or completely);
- 9 (d) felling or removing the tree;
- 10 (e) cutting branches or stems of the tree between branch unions
- 11 (*lopping*);
- 12 (f) removing branches of the tree to a previously pruned or lopped
- 13 point (*pollarding*);
- 14 (g) doing major pruning of the tree;
- 15 (h) doing anything else to or in relation to the tree that—
- 16 (i) causes it to die; or
- 17 (ii) significantly reduces its expected life; or
- 18 (iii) significantly and adversely affects its health, stability or
- 19 general appearance.

1 **13 Meaning of *major pruning***

2 (1) In this part:

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

5 (2) In this section:

6 *minor pruning*, of a registered tree, means pruning (other than
7 lopping or pollarding) done in accordance with AS 4373 that—

8 (a) only involves removing deadwood; or

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

11 (c) is the first pruning of the tree in the calendar year, affects less
12 than 10% of the canopy and does not alter the overall shape of
13 the canopy.

14 *minor pruning*, of a regulated tree, means pruning (other than
15 lopping or pollarding) done in accordance with AS 4373 that—

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

17 (b) for a fruit tree—is done for fruit production.

18 **14 Meaning of *prohibited groundwork***

19 In this part:

20 *prohibited groundwork*—a person does *prohibited groundwork* in
21 the protection zone for a protected tree if the person—

22 (a) contaminates the soil in the protection zone with something
23 that is poisonous to trees; or

24 (b) cuts any of the tree's roots in the protection zone that have a
25 diameter greater than 50mm; or

(c) does either of the following in the protection zone, other than in cultivating the soil for horticultural purposes:

(i) excavates to a depth greater than 10cm over an area 1m² or larger;

(ii) raises the soil level by more than 10cm above the natural soil level over an area 4m² or larger.

Examples of cultivation for horticultural purposes

1 preparing garden beds for planting

2 planting trees and shrubs

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

Division 3.2 Prohibited activities

15 Damaging protected trees

(1) A person commits an offence if—

(a) the person engages in conduct that damages a protected tree; and

(b) the person is reckless about whether the conduct would damage the protected tree.

Maximum penalty: 400 penalty units.

(2) A person commits an offence if the person engages in conduct reckless about whether the conduct would damage a protected tree.

Maximum penalty: 200 penalty units.

(3) A person commits an offence if—

(a) the person engages in conduct that damages a protected tree; and

1 (b) the person is negligent about whether the conduct would
2 damage the protected tree.

3 Maximum penalty: 100 penalty units.

4 (4) A person commits an offence if the person engages in conduct that
5 damages, or is likely to damage, a protected tree.

6 Maximum penalty: 50 penalty units.

7 (5) For subsections (1), (2) and (3), strict liability applies to the
8 circumstance that the tree is a protected tree.

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

10 **16 Doing prohibited groundwork**

11 (1) A person commits an offence if—

12 (a) the person does prohibited groundwork in the protection zone
13 for a protected tree; and

14 (b) the person is reckless about whether the groundwork is
15 prohibited groundwork in the protection zone for a protected
16 tree.

17 Maximum penalty: 200 penalty units.

18 (2) A person commits an offence if—

19 (a) the person does prohibited groundwork in the protection zone
20 for a protected tree; and

21 (b) the person is negligent about whether the groundwork is
22 prohibited groundwork in the protection zone for a protected
23 tree.

24 Maximum penalty: 100 penalty units.

(3) A person commits an offence if the person does prohibited groundwork in the protection zone for a protected tree.

Maximum penalty: 50 penalty units.

(4) For subsections (1) and (2), strict liability applies to the circumstances that—

(a) the tree is a protected tree; and

(b) the groundwork is done in the protection zone for the tree.

(5) An offence against subsection (3) is a strict liability offence.

17 Exceptions

(1) Section 15 and section 16 do not apply to—

(a) an activity approved under section 22 or section 26 that is done in accordance with the conditions (if any) of the approval (whether or not done by the person who applied for the approval); or

(b) the removal of a tree if the registration of the tree is cancelled under division 7.3 for safety reasons; or

(c) anything done in accordance with—

(i) a tree management plan approved under section 32; or

(ii) a direction under the *Plant Diseases Act 2002*, section 13 (Direction for seizure, disinfection, destruction etc of plants etc); or

(d) anything done in relation to a regulated tree under—

(i) the *Utilities Act 2000*, section 105 (Installation of network facilities) or section 106 (Maintenance of network facilities); or

(ii) a network protection notice given under that Act, section 125 (Network protection notices).; or

- 1 (e) anything done honestly by a relevant person in the exercise or
2 purported exercise of a function under the *Emergencies Act*
3 2004 for the purpose of protecting life or property, or
4 controlling, extinguishing or preventing the spread of fire.
- 5 (2) In this section:
- 6 ***relevant person*** means—
- 7 (a) the chief officer (fire brigade); or
- 8 (b) any other member of the fire brigade; or
- 9 (c) the chief officer (rural fire service); or
- 10 (d) any other member of the rural fire service; or
- 11 (e) any other person under the control of the chief officer (fire
12 brigade) or the chief officer (rural fire service); or
- 13 (f) a police officer.

14 **Division 3.3 Approved activities**

15 **18 Criteria for approval**

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

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

-
- 1 **19 Application for approval of tree damaging etc activity**
- 2 A person may apply, in writing, to the conservator for approval for
- 3 an activity that would or may—
- 4 (a) damage a protected tree; or
- 5 (b) be prohibited groundwork in the protection zone for a
- 6 protected tree.
- 7 *Note 1* A fee may be determined under s 98 for an application.
- 8 *Note 2* If a form is approved under s 99 for an application, the form must be
- 9 used.
- 10 **20 Further information for approval application**
- 11 (1) The conservator may, by written notice given to the applicant,
- 12 require the applicant to give the conservator further stated
- 13 information or a document that the conservator reasonably needs to
- 14 decide the application.
- 15 (2) If the applicant fails to comply with a requirement under
- 16 subsection (1), the conservator may refuse to consider the
- 17 application further.
- 18 **21 Advisory panel advice on approval application**
- 19 The conservator may ask the advisory panel for advice on the
- 20 application.
- 21 **22 Decision on approval application**
- 22 (1) The conservator must decide whether to approve the activity to
- 23 which the application relates.
- 24 (2) In making a decision on the application, the conservator must have
- 25 regard to—
- 26 (a) the approval criteria; and
- 27 (b) the advice (if any) of the advisory panel; and
-

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

4 **23 Notice of decision on approval application**

- 5 (1) The conservator must give written notice of the decision on the
- 6 application to—
- 7 (a) the applicant; and
- 8 (b) the lessee of, or land management agency for, the land where
- 9 the tree is located; and
- 10 (c) the lessee of, or land management agency for, land where the
- 11 activity is to be undertaken; and
- 12 (d) the lessee of land that—
- 13 (i) adjoins the land where the tree is located; and
- 14 (ii) is within 100m of the tree; and
- 15 (e) if the application relates to a tree that has heritage
- 16 significance—the heritage council.
- 17 (2) However, the conservator need not give more than 1 notice to a
- 18 particular person.
- 19 (3) The conservator may give written notice of the decision to anyone
- 20 else the conservator considers appropriate.

21 **24 Operation of approval**

- 22 (1) Subject to section 95 (Application for reconsideration of certain
- 23 decisions), an approval takes effect on the date stated in the notice
- 24 of decision.
- 25 (2) The date stated in the notice must be at least 14 days after the day
- 26 the notice is given to the applicant.

- 1 (3) Unless sooner cancelled, the approval remains in force for the
2 period stated in the approval.
- 3 (4) The conservator may, in writing, extend the approval for a stated
4 period if satisfied that the activity still satisfies the approval criteria.
- 5 (5) The approval may be extended under subsection (4) even if it has
6 already ended.

7 **25 Cancellation of approval**

- 8 (1) The conservator may cancel an approval if satisfied that the activity
9 approved does not satisfy, or no longer satisfies, the approval
10 criteria.
- 11 (2) The conservator must give written notice of the cancellation to—
- 12 (a) the applicant; and
- 13 (b) the lessee of, or land management agency for, the land where
14 the tree is located; and
- 15 (c) the lessee of, or land management agency for, land where the
16 activity was approved to be undertaken; and
- 17 (d) the lessee of land that—
- 18 (i) adjoins the land where the tree is located; and
- 19 (ii) is within 100m of the tree.
- 20 (3) However, the conservator need not give more than 1 notice to a
21 particular person.
- 22 (4) For subsection (2) (a), it is sufficient if the conservator sends the
23 notice to the applicant at the address last given to the conservator by
24 the applicant.
- 25 (5) The conservator may give written notice of the cancellation to
26 anyone else the conservator considers appropriate.

1 (6) Subject to section 95 (Application for reconsideration of certain
2 decisions), the cancellation takes effect on the date stated in the
3 notice of cancellation.

4 (7) The date stated in the notice must be at least 14 days after the day
5 the notice is given to the applicant.

6 **26 Approval in urgent circumstances or for minor works**

7 (1) A person may apply to the conservator under this section for an
8 approval for an activity that would or may—

9 (a) damage a protected tree; or

10 (b) be prohibited groundwork in the protection zone for a
11 protected tree.

12 (2) The application may be made orally or in writing.

13 (3) The conservator may approve the activity if satisfied that—

14 (a) the circumstances require the application to be considered
15 urgently; and

16 (b) the activity is necessary to protect the health or safety of
17 people or animals, or public or private property.

18 (4) The conservator may also approve an activity that is, or may be,
19 major pruning or prohibited groundwork if the conservator is
20 satisfied the activity will have little or no adverse impact on the
21 health or stability of the tree.

22 (5) The approval may be given orally or in writing but the conservator
23 must make a written record of any oral approval as soon as
24 practicable after giving it.

25 (6) The approval may be given subject to conditions stated in the
26 approval.

27 (7) The conservator must give written notice of the decision on the
28 application to the applicant.

- 1 (8) Unless sooner cancelled, the approval has effect for the period stated
2 in the approval.

3 **27 Compliance with conditions of approval**

- 4 (1) If an approval is given under section 22 or section 26 subject to
5 conditions, the person to whom the approval is given must—

6 (a) ensure that a notice of the conditions of approval is
7 prominently displayed near the tree; or

8 (b) take other reasonable steps to ensure that anyone who may do
9 anything to the tree or in the protection zone for the tree knows
10 about the conditions of the approval.

11 Maximum penalty: 50 penalty units.

- 12 (2) A person commits an offence if the person fails to comply with a
13 condition of an approval given under section 22 or section 26.

14 Maximum penalty: 50 penalty units.

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

1 **Part 4 Tree management plans**

2 **28 Guidelines for tree management plans**

3 (1) The conservator may, in writing, determine guidelines for tree
4 management plans.

5 (2) A determination is a disallowable instrument.

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

8 **29 Proposal or application for approval of tree management**
9 **plan**

10 (1) The conservator may, on the conservator's own initiative, propose a
11 tree management plan for a registered tree in a built-up urban area.

12 (2) Anyone else may apply for approval of a tree management plan for
13 any tree in a built-up urban area.

14 *Note 1* A fee may be determined under s 98 for an application.

15 *Note 2* If a form is approved under s 99 for an application, the form must be
16 used.

17 (3) An application under subsection (2) must be in writing and must be
18 given to the conservator.

19 **30 Further information for tree management plan application**

20 (1) The conservator may, by written notice given to the applicant,
21 require the applicant to give the conservator further stated
22 information or a document that the conservator reasonably needs to
23 decide the application.

24 (2) If the applicant fails to comply with a requirement under
25 subsection (1), the conservator may refuse to consider the
26 application further.

1 **31 Advisory panel advice on proposed tree management**
2 **plan**

3 The conservator may ask the advisory panel for advice on the
4 proposal or application under section 29.

5 **32 Decision on tree management plan**

6 (1) The conservator must decide whether to approve the tree
7 management plan.

8 (2) In making the decision, the conservator must have regard to—

9 (a) the guidelines approved under section 28; and

10 (b) the advice (if any) of the advisory panel; and

11 (c) anything else the conservator considers relevant.

12 (3) If the conservator approves a tree management plan for a registered
13 tree, the conservator must include details of the plan in the tree
14 register.

15 **33 Notice of decision on tree management plan**

16 (1) The conservator must give written notice of the decision on the tree
17 management plan to the applicant (if any).

18 (2) If the decision is to approve the tree management plan, the
19 conservator must also give written notice of the decision to—

20 (a) the lessee of the land where the tree is located; and

21 (b) the lessee of land that—

22 (i) adjoins the land where the tree is located; and

23 (ii) is within 100m of the tree; and

24 (c) if the plan is for a tree that the conservator considers may have
25 heritage significance—the heritage council.

Part 4 Tree management plans

Section 34

- 1 (3) However, the conservator need not give more than 1 notice to a
2 particular person.
- 3 (4) The conservator may also give written notice of the decision to
4 anyone else the conservator considers appropriate.
- 5 **34 Operation of tree management plan**
- 6 (1) Subject to section 95 (Application for reconsideration of certain
7 decisions), a tree management plan takes effect on the date stated in
8 the notice of decision.
- 9 (2) The date stated in the notice must be at least 14 days after the day
10 the notice is given to—
- 11 (a) the applicant; or
- 12 (b) for a tree management plan proposed on the conservator's own
13 initiative—the people mentioned in section 33 (2).

Part 5 Tree management precincts

35 Criteria for tree management precincts

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

(2) A determination is a disallowable instrument.

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

36 Tree management precinct declaration

(1) The Minister may, in writing, declare a stated area of land in a built-up urban area to be a tree management precinct.

(2) The Minister may declare an area of land in a built-up urban area to be a tree management precinct only if satisfied that the area satisfies the criteria determined under section 35.

(3) A declaration is a disallowable instrument.

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

1 **Part 6 Tree register**

2 **37 Meaning of *registered tree* for pt 6**

3 In this part:

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

5 **38 Tree register**

6 (1) The conservator must keep a register of trees (the *tree register*).

7 (2) The tree register must include—

8 (a) for each provisionally registered tree—everything required to
9 be entered in the register under section 45; and

10 (b) for each registered tree—

11 (i) everything required to be entered in the register under
12 section 51 (2); and

13 (ii) the tree management plan (if any) for the tree; and

14 (c) the following information about any activity in relation to a
15 provisionally registered or registered tree for which an
16 approval under division 3.3 is in effect:

17 (i) the activity approved;

18 (ii) any conditions to which the approval is subject;

19 (iii) the period of the approval; and

20 (d) any changes to the information in the register that are
21 necessary to keep the register up-to-date.

22 (3) The tree register may also include any other information the
23 conservator considers relevant.

1 **39 Correction of tree register**

2 The conservator may correct a mistake or omission in the tree
3 register subject to the requirements (if any) of the regulations.

4 **40 Inspection of tree register**

5 (1) A person may, without charge, inspect the tree register during
6 ordinary office hours at the office of the conservator.

7 (2) A person may make a copy of all or part of the tree register.

8 *Note* A fee may be determined under s 98 for s (2).

9 **41 Restricted information in tree register**

10 (1) This section applies if anything required to be entered in the tree
11 register in relation to a tree is restricted information.

12 (2) The conservator must include a statement in the register about the
13 effect of subsections (3) and (4).

14 (3) The restricted information must not be disclosed or copied under
15 section 40 except in accordance with subsection (4).

16 (4) The restricted information may be made available for inspection or
17 copying only if the publication of the information is approved under
18 section 64 (Approval to publish restricted information).

Part 7 Registration of trees

Division 7.1 Criteria for registration etc

42 Criteria for registration and cancellation of registration

(1) The Minister may, in writing, determine—

(a) criteria (the *registration criteria*) for the registration of a tree;
and

(b) criteria (the *cancellation criteria*) for the cancellation of the
registration of a tree.

(2) A determination is a disallowable instrument.

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

Division 7.2 Registration process

43 Nomination for registration

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

Note 1 A fee may be determined under s 98 for a nomination.

Note 2 If a form is approved under s 99 for a nomination, the form must be
used.

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

44 Decision on provisional registration

- (1) If the conservator receives a nomination for a tree, the conservator must decide whether to provisionally register the tree.
- (2) The conservator may provisionally register a tree only if the conservator considers the tree may satisfy the registration criteria.
- (3) The conservator may refuse to consider a nomination if satisfied the nomination is frivolous or vexatious.

45 Provisional registration

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

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

46 Notice of decision on provisional registration

- (1) The conservator must give written notice of a decision under section 44 to—
- (a) the person who nominated the tree for registration; and
 - (b) the lessee of, or land management agency for, the land where the tree is located; and
 - (c) the lessee of, or land management agency for, land that—
 - (i) adjoins the land where the tree is located; and
 - (ii) is within 100m of the tree; and

- 1 (d) if the conservator considers the tree may have heritage
2 significance—the heritage council.
- 3 (2) However, the conservator need not give more than 1 notice to a
4 particular person.
- 5 (3) The conservator may give written notice of the decision to anyone
6 else the conservator considers appropriate.
- 7 (4) The conservator must also publish notice of the decision in a daily
8 newspaper.
- 9 (5) A notice under this section must include—
- 10 (a) enough information to enable the tree to be identified; and
- 11 (b) a statement to the effect that any comments on the proposed
12 registration of the tree may be given to the conservator on or
13 before the closing date stated in the notice.
- 14 (6) The closing date must be at least 21 days after the day the notice is
15 published in a daily newspaper.
- 16 (7) A notice under this section must not include restricted information.

17 **47 Consultation on proposed registration**

- 18 (1) After making a decision under section 44, the conservator must ask
19 the advisory panel for advice on the proposed registration of the
20 tree.
- 21 (2) If the conservator considers the tree may have heritage significance,
22 the conservator must also ask the heritage council for advice on the
23 proposed registration.

24 **48 Period of provisional registration**

- 25 (1) The provisional registration of a tree is for 1 year beginning on the
26 day it is provisionally registered.
- 27 (2) However, the provisional registration ends if, within the year—

-
- 1 (a) the tree is registered; or
2 (b) the conservator decides not to register the tree, the appeal
3 period for the decision ends and—
4 (i) there is no appeal within the period; or
5 (ii) any appeal is finally decided and is unsuccessful.
6 (3) The conservator may provisionally register a tree more than once.

7 **49 Decision on registration**

- 8 (1) The conservator must decide whether to register the tree having
9 regard to—
10 (a) any advice on the proposed registration given to the
11 conservator by the advisory panel or the heritage council; and
12 (b) any comments received on the proposed registration on or
13 before the closing date stated in the notice under section 46.
14 *Note* A decision under this section is a reviewable decision (see s 97).
15 (2) The conservator may register the tree only if the conservator
16 considers the tree satisfies the registration criteria.

17 **50 Notice of decision on registration**

- 18 (1) The conservator must give written notice of a decision under
19 section 49 to—
20 (a) the person who nominated the tree for registration; and
21 (b) the lessee of, or land management agency for, the land where
22 the tree is located; and
23 (c) the lessee of, or land management agency for, land that—
24 (i) adjoins the land where the tree is located; and
25 (ii) is within 100m of the tree; and
26 (d) anyone who gave the conservator—

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

13 **51 Registration**

- 14 (1) This section applies if—
15 (a) the conservator decides to register a tree; and
16 (b) the appeal period for the decision ends and—
17 (i) there is no appeal within the period; or
18 (ii) any appeal is finally decided and is unsuccessful.
19 (2) The conservator must register the tree by entering in the tree
20 register—
21 (a) a photograph or other image of the tree; and
22 (b) the tree's location; and
23 (c) the tree's botanical name and any relevant horticultural
24 information; and
25 (d) a description of the protection zone for the tree; and
26 (e) a statement about the tree's significance.

Division 7.3 Cancellation of registration

52 Proposal for cancellation of registration

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

Note 1 A fee may be determined under s 98 for a proposal.

Note 2 If a form is approved under s 99 for a proposal, the form must be used.

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

53 Notice of proposed cancellation of registration

- (1) Before considering a proposal for the cancellation of the registration of a tree, the conservator must give written notice of the proposed cancellation to—

- (a) the person who proposed the cancellation; and
- (b) the lessee of, or land management agency for, the land where the tree is located; and
- (c) the lessee of, or land management agency for, land where the protection zone for the tree is located; and
- (d) if the tree register indicates that the tree has heritage significance—the heritage council.

- (2) However, the conservator need not give more than 1 notice to a particular person.
- (3) The conservator may give written notice of the proposed cancellation to anyone else the conservator considers appropriate.
- (4) The conservator must also publish notice of the proposed cancellation in a daily newspaper.
- (5) A notice under this section must include—

- 1 (a) an indication of whether the conservator considers that the
2 proposed cancellation may satisfy the cancellation criteria; and
3 (b) a statement to the effect that any comments about the proposed
4 cancellation may be given to the conservator by the closing
5 date stated in the notice.
- 6 (6) The closing date must be at least 21 days after the day the notice is
7 published in a daily newspaper.
- 8 (7) A notice under this section must not include restricted information.

9 **54 Consultation on proposed cancellation of registration**

- 10 (1) After giving a notice under section 53, the conservator must ask the
11 advisory panel for advice on the proposed cancellation.
- 12 (2) If the tree register indicates that the tree has heritage significance,
13 the conservator must also ask the heritage council for advice on the
14 proposed cancellation.

15 **55 Decision on cancellation of registration**

- 16 (1) The conservator must decide whether to cancel the registration of
17 the tree having regard to—
- 18 (a) any advice on the proposed cancellation given to the
19 conservator by the advisory panel or the heritage council; and
- 20 (b) any comments received on the proposed cancellation on or
21 before the closing date stated in the notice under section 53.
- 22 *Note* A decision under this section is a reviewable decision (see s 97).
- 23 (2) The conservator may cancel the registration of the tree only if the
24 conservator considers the cancellation satisfies the cancellation
25 criteria.

56 Notice of decision on cancellation of registration

- (1) The conservator must give written notice of a decision under section 55 to—
- (a) the person who proposed the cancellation; and
 - (b) the lessee of, or land management agency for, the land where the tree is located; and
 - (c) the lessee of, or land management agency for, land where the protection zone for the tree is located; and
 - (d) anyone who gave the conservator—
 - (i) written comments about the proposed cancellation of registration; and
 - (ii) contact details for notification of the conservator's decision; and
 - (e) if the heritage council gave advice on the proposed cancellation—the heritage council.
- (2) However, the conservator need not give more than 1 notice to a particular person.
- (3) The conservator may give written notice of the decision to anyone else the conservator considers appropriate.
- (4) If the decision is to cancel the registration, the conservator must also publish notice of the decision in a daily newspaper.
- (5) A notice under this section must not include restricted information.

57 Cancellation of registration

- (1) This section applies if—
- (a) the conservator decides to cancel the registration of a tree; and
 - (b) the appeal period for the decision ends and—

- 1 (i) there is no appeal within the period; or
2 (ii) any appeal is finally decided and is unsuccessful.
- 3 (2) The conservator must cancel the registration of the tree by removing
4 the entry about the tree from the tree register.
- 5 **58 Restriction on building in protection zone**
- 6 (1) If the registration of a tree is cancelled, a development approval
7 under the *Land (Planning and Environment) Act 1991* for land that
8 includes the protection zone for the tree must not allow anything to
9 be built in the protection zone for—
- 10 (a) 5 years after the day the registration is cancelled; or
11 (b) any shorter period approved, in writing, by the conservator.
- 12 (2) The conservator must keep a record of protection zones that are
13 subject to restriction under subsection (1).
- 14 (3) The record must be available for anyone to inspect during ordinary
15 office hours at the office of the conservator.
- 16 (4) In this section:
- 17 ***protection zone***, for a tree the registration of which has been
18 cancelled, means the area that was the protection zone for the tree
19 immediately before the registration was cancelled.

Part 8 Restricted information

59 Application of pt 8

This part applies in relation to—

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

60 Restricted non-Aboriginal information

- (1) The conservator may, in writing, declare particular information about the location or nature of the tree to be restricted information.
- (2) The conservator may make the declaration only if satisfied, on reasonable grounds, that public disclosure of the information would be likely to have a substantial adverse effect on the values for which the tree is or may be registered.
- (3) The conservator must use the conservator's best endeavours give a copy of the declaration to—
 - (a) the person who nominated the tree for registration; and
 - (b) the lessee of, or land management agency for, the land where the tree is located; and
 - (c) the lessee of, or land management agency for, land that—
 - (i) adjoins the land where the tree is located; and
 - (ii) is within 100m of the tree; and
 - (d) if the tree has or may have heritage significance—the heritage council.

61 Restricted Aboriginal information

(1) If the tree is an Aboriginal heritage tree, information about the location or nature of the tree is restricted information unless the conservator declares in writing that it is not.

(2) Before making a declaration under subsection (1), the conservator must consult, and consider the views of, each representative Aboriginal organisation about the information.

(3) The conservator must use the conservator's best endeavours to give a copy of the declaration to—

(a) the person who nominated the tree for registration; and

(b) the lessee of, or land management agency for, the land where the tree is located; and

(c) the lessee of, or land management agency for, land that—

(i) adjoins the land where the tree is located; and

(ii) is within 100m of the tree; and

(d) the heritage council.

(4) In this section:

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

(a) Aboriginal tradition;

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

representative Aboriginal organisation means—

(a) an organisation declared under the *Heritage Act 2004*, section 14 to be a representative Aboriginal organisation for that Act; or

- 1 (b) an organisation prescribed under the regulations for this
2 definition.

3 **62 Restricted information not to be published without**
4 **approval**

- 5 (1) A person commits an offence if the person—
6 (a) publishes restricted information about a tree; and
7 (b) knows that the information is restricted information.
8 Maximum penalty: 50 penalty units.
9 (2) Subsection (1) does not apply if the publication is—
10 (a) in accordance with an approval under section 63; or
11 (b) for the exercise of a function under this Act or another
12 Territory law; or
13 (c) is by an Aboriginal person to another Aboriginal person and is
14 about an Aboriginal heritage tree.

15 **63 Approval to publish restricted information**

- 16 (1) The conservator may approve the publication of restricted
17 information about a tree if satisfied that the publication will not have
18 a substantial adverse effect on the values for which the tree is or
19 may be registered.
20 (2) An approval may be given only on application.
21 (3) An approval must be given in writing to the applicant.
22 (4) An application must be in writing and must—
23 (a) identify the restricted information proposed to be published;
24 and
25 (b) state the reason for the publication; and

- 1 (c) state the nature of the publication, including the person, people
2 or kind of people to whom it would be directed.

3 *Note 1* A fee may be determined under s 98 for an application.

4 *Note 2* If a form is approved under s 99 for an application, the form must be
5 used.

6 **64 Limited access to restricted information**

- 7 (1) This section applies if—

8 (a) land is offered for sale; and

9 (b) an interested person for the land applies to the conservator for
10 access to restricted information relevant to the conservation
11 and use of the land.

12 *Note 1* A fee may be determined under s 98 for an application.

13 *Note 2* If a form is approved under s 99 for an application, the form must be
14 used.

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

- 18 (3) In this section:

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

21 (a) someone considering buying an interest in the land;

22 (b) the person who nominated the tree for registration;

23 (c) the lessee of, or land management agency for, the land where
24 the tree is located;

25 (d) the lessee of, or land management agency for, land that—

26 (i) adjoins the land where the tree is located; and

27 (ii) is within 100m of the tree;

- 1 (e) if the tree has or may have heritage significance—the heritage
2 council.

1 **Part 9** **Independent tree advisory panel**

2 **65** **Establishment of advisory panel**

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

5 **66** **Members of advisory panel**

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

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

10 *Note 2* In particular, an appointment may be made by naming a person or
11 nominating the occupant of a position (see s 207).

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

14 (2) A member must be appointed to the advisory panel for a term of at
15 least 1 year and not longer than 2 years.

16 (3) The Minister must not appoint a person to the advisory panel unless
17 the person has extensive experience in 1 or more of the following
18 fields:

19 (a) arboriculture;

20 (b) forestry;

21 (c) horticulture;

22 (d) landscape architecture;

23 (e) natural and cultural heritage.

24 (4) The panel must include—

25 (a) 1 or more members with extensive experience in arboriculture
26 or forestry; and

- 1 (b) members who between them include people with extensive
2 experience in 2 or more of the fields mentioned in
3 subsection (3).

4 **67 Functions of advisory panel**

5 The advisory panel has the following functions:

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

16 **68 Ending appointment—advisory panel members**

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

- 19 (a) for misbehaviour or physical or mental incapacity; or
20 (b) for contravening section 69.

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

23 **69 Disclosure of interests—advisory panel members**

24 (1) This section applies if—

- 25 (a) a member of the advisory panel has a direct or indirect
26 financial interest or personal interest in an issue in relation to

- 1 which the advisory panel has been asked to advise the
2 conservator; and
- 3 (b) the interest could conflict with the proper exercise of the
4 advisory panel's functions in relation to the advice.
- 5 (2) As soon as practicable after the member or the advisory panel
6 becomes aware of the relevant facts, the member or advisory panel
7 must disclose the nature of the interest to the conservator.
- 8 (3) The member must not advise, or further advise, the conservator in
9 relation to the issue, unless the conservator directs otherwise.
- 10 (4) Within 14 days after the end of each financial year, the conservator
11 must give the Minister a statement of any disclosure of interest
12 made under this section, and any direction given by the conservator,
13 during the financial year.

14 **70 Advisory panel's procedures etc**

15 The regulations may prescribe procedures of the advisory panel,
16 including how decisions are made by the panel.

17 **Examples of what regulations may prescribe**

- 18 1 the quorum at meetings of the advisory panel
19 2 who is to preside at meetings of the advisory panel
20 3 how questions are to be resolved at meetings of the advisory panel

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

24 **71 Delegation by advisory panel**

- 25 (1) The advisory panel may delegate any of its functions to a member of
26 the advisory panel subject to the requirements (if any) of the
27 regulations.

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

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

1 **Part 10 Tree protection directions**

2 **72 Criteria for tree protection directions**

3 (1) The conservator may, in writing, determine criteria for the giving of
4 tree protection directions.

5 (2) A determination is a disallowable instrument.

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

8 **73 Conservator may give tree protection directions**

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

13 (2) A direction may only be given in accordance with the criteria
14 determined under section 72.

15 (3) If the direction is to do a stated thing, the direction must state the
16 time (not longer than 14 days after the day the direction is given)
17 within which the direction must be complied with.

18 (4) A person commits an offence if the person intentionally contravenes
19 a direction.

20 Maximum penalty: 50 penalty units.

1 **Part 11** **Enforcement**

2 **Division 11.1** **General**

3 **74** **Definitions for pt 10**

4 In this part:

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

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

10 ***occupier***, of premises, includes—

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

14 *Note* The dictionary defines ***premises*** as including land.

15 ***offence*** includes an offence that there are reasonable grounds for

16 believing has been, is being, or will be, committed.

17 **Division 11.2** **Authorised people**

18 **75** **Appointment of authorised people**

19 The chief executive may appoint a person to be an authorised person

20 for this Act.

21 *Note 1* For the making of appointments (including acting appointments), see

22 Legislation Act, pt 19.3.

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- 1 (i) inspect a tree, or the area near a tree, that is registered or
2 proposed to be registered; or
- 3 (ii) give a tree protection direction to the owner or occupier;
4 or
- 5 (c) at any time, enter premises with the occupier's consent; or
- 6 (d) at any time, enter premises if the authorised person believes, on
7 reasonable grounds, that the circumstances are so serious and
8 urgent that immediate entry to the premises without the
9 authority of a search warrant is necessary; or
- 10 (e) enter premises in accordance with a search warrant.
- 11 (2) However, subsections (1) (a) and (1) (b) do not authorise entry into
12 a part of premises that is being used only for residential purposes.
- 13 (3) An authorised person may, without the consent of the occupier of
14 premises, enter land around the premises to ask for consent to enter
15 the premises.
- 16 (4) To remove any doubt, an authorised person may enter premises
17 under subsection (1) without payment of an entry fee or other
18 charge.
- 19 (5) For subsection (1) (d), the inspector may enter the premises with
20 any necessary assistance and force.

21 **78 Production of identity card**

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

25 **79 Consent to entry**

- 26 (1) When seeking the consent of an occupier to enter premises under
27 section 77 (1) (c), an authorised person must—
- 28 (a) produce his or her identity card; and

- 1 (b) tell the occupier—
- 2 (i) the purpose of the entry; and
- 3 (ii) that anything found and seized under this part may be
- 4 used in evidence in court; and
- 5 (iii) that consent may be refused.
- 6 (2) If the occupier consents, the authorised person must ask the occupier
- 7 to sign a written acknowledgment (an ***acknowledgment of***
- 8 ***consent***)—
- 9 (a) that the occupier was told—
- 10 (i) the purpose of the entry; and
- 11 (ii) that anything found and seized under this part may be
- 12 used in evidence in court; and
- 13 (iii) that consent may be refused; and
- 14 (b) that the occupier consented to the entry; and
- 15 (c) stating the time and date when consent was given.
- 16 (3) If the occupier signs an acknowledgment of consent, the authorised
- 17 person must immediately give a copy to the occupier.
- 18 (4) A court must find that the occupier did not consent to entry to the
- 19 premises by the authorised person under this part if—
- 20 (a) the question whether the occupier consented to the entry arises
- 21 in a proceeding in the court; and
- 22 (b) an acknowledgment of consent for the entry is not produced in
- 23 evidence; and
- 24 (c) it is not proved that the occupier consented to the entry.

- 1 **80 General powers on entry to premises**
- 2 (1) An authorised person who enters premises under this part may, for
- 3 this Act, do 1 or more of the following in relation to the premises or
- 4 anything at the premises:
- 5 (a) inspect or examine;
- 6 (b) take measurements or conduct tests;
- 7 (c) take samples;
- 8 (d) take photographs, films, or audio, video or other recordings;
- 9 (e) require the occupier, or anyone at the premises, to give the
- 10 authorised person reasonable help to exercise a power under
- 11 this part.
- 12 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
- 13 privilege against selfincrimination and client legal privilege.
- 14 (2) A person must take all reasonable steps to comply with a
- 15 requirement made of the person under subsection (1) (f).
- 16 Maximum penalty: 50 penalty units.
- 17 **81 Power to seize things**
- 18 (1) An authorised person who enters premises under this part with the
- 19 occupier’s consent may seize anything at the premises if—
- 20 (a) the authorised person is satisfied, on reasonable grounds, that
- 21 the thing is connected with an offence against this Act; and
- 22 (b) seizure of the thing is consistent with the purpose of the entry
- 23 told to the occupier when seeking the occupier’s consent.
- 24 (2) An authorised person who enters premises under a warrant under
- 25 this part may seize anything at the premises that the authorised
- 26 person is authorised to seize under the warrant.
- 27 (3) An authorised person who enters premises under this part (whether
- 28 with the consent of the occupier, under a warrant or otherwise) may

- 1 seize anything at the premises if satisfied, on reasonable grounds,
2 that—
- 3 (a) the thing is connected with an offence against this Act; and
4 (b) the seizure is necessary to prevent the thing from being—
- 5 (i) concealed, lost or destroyed; or
6 (ii) used to commit, continue or repeat the offence.
- 7 (4) Having seized a thing, an authorised person may—
- 8 (a) remove the thing from the premises where it was seized (the
9 *place of seizure*) to another place; or
- 10 (b) leave the thing at the place of seizure but restrict access to it.
- 11 (5) A person commits an offence if—
- 12 (a) the person interferes with a seized thing, or anything
13 containing a seized thing, to which access has been restricted
14 under subsection (4); and
- 15 (b) the person does not have an authorised person's approval to
16 interfere with the thing.
- 17 Maximum penalty: 50 penalty units, imprisonment for 6 months or
18 both.
- 19 (6) An offence against subsection (5) is a strict liability offence.

20 **82 Power to require name and address etc**

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

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

- 1 (2) If an authorised person makes a requirement of a person under
2 subsection (1), the authorised person must—
3 (a) tell the person the reasons for the requirement; and
4 (b) as soon as practicable, record the reasons.
5 (3) A person commits an offence if the person contravenes a
6 requirement under subsection (1).
7 Maximum penalty: 10 penalty units.
8 (4) However, a person is not required to comply with a requirement
9 under subsection (1) if, when asked by the person, the authorised
10 person does not produce his or her identity card for inspection by
11 the person.
12 (5) An offence against subsection (3) is a strict liability offence.
13 (6) In this section:
14 *home address*, of a person, means the address of the place where the
15 person usually lives.

16 **Division 11.4 Search warrants**

17 **83 Warrants generally**

- 18 (1) An authorised person may apply to a magistrate for a warrant to
19 enter premises.
20 (2) The application must be sworn and state the grounds on which the
21 warrant is sought.
22 (3) The magistrate may refuse to consider the application until the
23 authorised person gives the magistrate all the information the
24 magistrate requires about the application in the way the magistrate
25 requires.
26 (4) The magistrate may issue a warrant only if satisfied there are
27 reasonable grounds for suspecting—

- 1 (a) there is a particular thing or activity connected with an offence
2 against this Act; and
- 3 (b) the thing or activity—
- 4 (i) is, or is being engaged in, at the premises; or
- 5 (ii) may be, or may be engaged in, at the premises within the
6 next 14 days.
- 7 (5) The warrant must state—
- 8 (a) that an authorised person may, with any necessary assistance
9 and force, enter the premises and exercise the authorised
10 person's powers under this part; and
- 11 (b) the offence for which the warrant is issued; and
- 12 (c) the things that may be seized under the warrant; and
- 13 (d) the hours when the premises may be entered; and
- 14 (e) the date, within 14 days after the day of the warrant's issue,
15 when the warrant ends.

16 **84 Warrants—application made other than in person**

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

- 1 (5) If it is not practicable to fax a copy to the authorised person—
2 (a) the magistrate must—
3 (i) tell the authorised person what the terms of the warrant
4 are; and
5 (ii) tell the authorised person the date and time the warrant
6 was issued; and
7 (b) the authorised person must complete a form of warrant (the
8 *warrant form*) and write on it—
9 (i) the magistrate's name; and
10 (ii) the date and time the magistrate issued the warrant; and
11 (iii) the warrant's terms.
12 (6) The faxed copy of the warrant, or the warrant form properly
13 completed by the authorised person, authorises the entry and the
14 exercise of the authorised person's powers under this part.
15 (7) The authorised person must, at the first reasonable opportunity, send
16 to the magistrate—
17 (a) the sworn application; and
18 (b) if the authorised person completed a warrant form—the
19 completed warrant form.
20 (8) On receiving the documents, the magistrate must attach them to the
21 warrant.
22 (9) A court must find that a power exercised by an authorised person
23 was not authorised by a warrant under this section if—
24 (a) the question arises in a proceeding before the court whether the
25 exercise of power was authorised by a warrant; and
26 (b) the warrant is not produced in evidence; and

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

3 **85 Search warrants—announcement before entry**

- 4 (1) An authorised person must, before anyone enters premises under a
5 search warrant—

6 (a) announce that the authorised person is authorised to enter the
7 premises; and

8 (b) give anyone at the premises an opportunity to allow entry to
9 the premises; and

10 (c) if the occupier of the premises, or someone else who
11 apparently represents the occupier, is present at the premises—
12 identify himself or herself to the person.

- 13 (2) The authorised person is not required to comply with subsection (1)
14 if the authorised person believes, on reasonable grounds, that
15 immediate entry to the premises is required to ensure—

16 (a) the safety of anyone (including the authorised person or any
17 person assisting); or

18 (b) that the effective execution of the warrant is not frustrated.

19 **86 Details of search warrant to be given to occupier etc**

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

24 (a) a copy of the warrant; and

25 (b) a document setting out the rights and obligations of the person.

87 Occupier entitled to be present during search etc

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

Division 11.5 Return and forfeiture of things seized

88 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 under section 81 (Power to seize things).
- (3) A receipt under this section must include the following:
- (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the authorised person's name, and how to contact the authorised person;
 - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

- 1 **89 Moving things to another place for examination or**
2 **processing under search warrant**
- 3 (1) A thing found at premises entered under a search warrant may be
4 moved to another place for examination or processing to decide
5 whether it may be seized under the warrant if—
- 6 (a) both of the following apply:
- 7 (i) there are reasonable grounds for believing that the thing is
8 or contains something to which the warrant relates;
- 9 (ii) it is significantly more practicable to do so having regard
10 to the timeliness and cost of examining or processing the
11 thing at another place and the availability of expert
12 assistance; or
- 13 (b) the occupier of the premises agrees in writing.
- 14 (2) The thing may be moved to another place for examination or
15 processing for no longer than 72 hours.
- 16 (3) An authorised person may apply to a magistrate for an extension of
17 time if the authorised person believes, on reasonable grounds, that
18 the thing cannot be examined or processed within 72 hours.
- 19 (4) The authorised person must give notice of the application to the
20 occupier of the premises, and the occupier is entitled to be heard on
21 the application.
- 22 (5) If a thing is moved to another place under this section, the
23 authorised person must, if practicable—
- 24 (a) tell the occupier of the premises the address of the place where,
25 and time when, the examination or processing will be carried
26 out; and
- 27 (b) allow the occupier or the occupier's representative to be
28 present during the examination or processing.

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

4 **90 Access to things seized**

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

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

9 **91 Return of things seized**

- 10 (1) A thing seized under this part must be returned to its owner, or
11 reasonable compensation must be paid by the Territory to the owner
12 for the loss of the thing if—

13 (a) an infringement notice for an offence relating to the thing is
14 not served on the owner within 90 days after the day of the
15 seizure and—

16 (i) a prosecution for an offence relating to the thing is not
17 begun within the 90-day period; or

18 (ii) a prosecution for an offence relating to the thing is begun
19 within the 90-day period but the court does not find the
20 offence proved; or

21 (b) an infringement notice for an offence relating to the thing is
22 served on the owner within 90 days after the day of the seizure,
23 the infringement notice is withdrawn and—

24 (i) a prosecution for an offence relating to the thing is not
25 begun within the 90-day period; or

26 (ii) a prosecution for an offence relating to the thing is so
27 begun but the court does not find the offence proved; or

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

17 **Division 11.6 Miscellaneous**

18 **92 Damage etc to be minimised**

- 19 (1) In the exercise, or purported exercise, of a function under this part,
20 an authorised person must take all reasonable steps to ensure that the
21 authorised person, and any person assisting the authorised person,
22 causes as little inconvenience, detriment and damage as practicable.
- 23 (2) If an authorised person, or a person assisting an authorised person,
24 damages anything in the exercise or purported exercise of a function
25 under this part, the authorised person must give written notice of the
26 particulars of the damage to the person the authorised person
27 believes, on reasonable grounds, is the owner of the thing.

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

4 **93 Compensation for exercise of enforcement powers**

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

Part 12 Review of decisions

94 Notice of decisions that can be reconsidered or reviewed

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

95 Application for reconsideration of certain decisions

- (1) Application may be made to the conservator for reconsideration of any of the following decisions of the conservator:
 - (a) to approve, or refuse to approve, an activity under section 22;
 - (b) to cancel the approval of an activity under section 25;

- 1 (c) to approve, or refuse to approve, a tree management plan under
2 section 32.
- 3 (2) The application may be made by anyone to whom the conservator
4 gave notice of the decision to be reconsidered.
- 5 (3) The application must be made within 14 days after the day the
6 notice of decision was given to the person.
- 7 (4) The application must be in writing and must set out the grounds on
8 which reconsideration of the decision is sought.
- 9 (5) If the application is made in accordance with this section, the
10 making of the application automatically stays the operation of the
11 decision until the application is finally dealt with.
- 12 **96 Reconsideration of decisions**
- 13 (1) As soon as practicable after receiving an application for
14 reconsideration of a decision (the *first decision*), the conservator
15 must ask the advisory panel for advice on the application.
- 16 (2) Within a reasonable time after receiving the advisory panel's advice,
17 the conservator must—
- 18 (a) reconsider the decision having regard to the advisory panel's
19 advice; and
- 20 (b) confirm, vary or revoke the decision.
- 21 (3) The conservator must give written notice of the decision on the
22 reconsideration to everyone to whom the conservator gave notice of
23 the first decision.

- 1 **97 Review of decisions by AAT**
- 2 (1) Application may be made to the administrative appeals tribunal for
- 3 review of the following decisions (the *reviewable decision*) of the
- 4 conservator:
- 5 (a) to approve, or refuse to approve, the registration of a tree under
- 6 section 49;
- 7 (b) to cancel, or refuse to cancel, the registration of a tree under
- 8 section 52;
- 9 (c) to approve, or refuse to approve, the publication of restricted
- 10 information under section 64;
- 11 (d) to give a direction under section 73;
- 12 (e) to confirm, vary or revoke a decision reconsidered under
- 13 section 96.
- 14 (2) The application may be made by anyone to whom the conservator
- 15 gave notice of the reviewable decision.
- 16 (3) The application must be made with 21 days after the day the person
- 17 was given notice of the reviewable decision.

Part 13 Miscellaneous

98 Determination of fees

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

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

- (2) A determination is a disallowable instrument.

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

99 Approved forms

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

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

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

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

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

100 Delegation of conservator's functions

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

(a) a public employee; or

(b) an authorised person; or

(c) a person prescribed under the regulations.

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

- (2) However, the conservator must not delegate the function of—

- 1 (a) deciding under section 49 whether to register a tree; or
2 (b) deciding under section 55 whether to cancel the registration of
3 a tree; or
4 (c) reconsidering a decision under section 96.

5 **101 Regulation-making power**

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

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

- 9 (2) The regulations may prescribe offences for contraventions of the
10 regulations and prescribe maximum penalties of not more than
11 10 penalty units for offences against the regulations.

Part 14 Transitional

102 Definitions for pt 14

In this part:

commencement day means the day this Act commences.

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

103 Repeal of Tree Protection (Interim Scheme) Act

The *Tree Protection (Interim Scheme) Act 2001* A2001-20 is repealed.

104 Heritage trees

(1) A tree that is included in the heritage places register as an individual tree immediately before the commencement day is taken to be registered under this Act.

(2) As soon as practicable, the conservator must enter in the tree register the details mentioned in section 51 (2) about the tree.

(3) In this section:

heritage places register means the register of heritage places incorporated in the Territory plan.

105 Interim tree management precincts

Each district under the *Districts Act 2002* is taken to be a tree management precinct on the commencement day.

106 Approved activities

(1) This section applies to an approval in force under the old Act, section 15 immediately before the commencement day.

(2) The approval—

1 (a) continues in force as if it had been given under this Act,
2 section 22; and

3 (b) may be extended or cancelled by the conservator under this
4 Act.

5 **107 Transitional regulations**

6 (1) The regulations may prescribe savings or transitional matters
7 necessary or convenient to be prescribed because of the enactment
8 of this Act.

9 (2) Without limiting the scope of subsection (1), the regulations may
10 prescribe matters necessary or convenient to be prescribed for
11 carrying out or giving effect to the provisions of this Act.

12 (3) Regulations made for this section must not be taken to be
13 inconsistent with this Act as far as they can operate concurrently
14 with this Act.

15 (4) This section is additional to, and does not limit, section 108.

16 **108 Modification of pt 14's operation**

17 The regulations may modify this part to make provision in relation
18 to any matter that, in the Executive's opinion, is not, or is not
19 adequately, dealt with in this part.

20 **109 Legislation amended—sch 1**

21 This Act amends the legislation mentioned in schedule 1.

22 **110 Expiry of pt 14**

23 This part expires 2 years after the day it commences.

Schedule 1 Consequential amendments

(see s 109)

Part 1.1 Administrative Appeals Tribunal Act 1989

[1.1] Section 49A

omit

- *Tree Protection (Interim Scheme) Act 2001*

substitute

- *Tree Protection Act 2004*

[1.2] Section 49B

omit

- *Tree Protection (Interim Scheme) Act 2001*

substitute

- *Tree Protection Act 2004*

Part 1.2 Land (Planning and Environment) Act 1991

[1.3] Section 229 (4) (b)

omit

a significant tree under the *Tree Protection (Interim Scheme) Act 2001*

substitute

a protected tree under the *Tree Protection Act 2004*

1 **[1.4] Section 254 (3) (d)**

2 *substitute*

3 (d) if the order sought relates to the pruning of a tree that is a
4 protected tree under the *Tree Protection Act 2004*—the
5 conservator; and

6 *Note* For restrictions on pruning etc a protected tree, see the *Tree Protection*
7 *Act 2004*.

8 **[1.5] Section 255 (2) (d)**

9 *substitute*

10 (d) if the order sought relates to the pruning of a tree that is a
11 protected tree under the *Tree Protection Act 2004*—the
12 conservator; and

13 *Note* For restrictions on pruning etc a protected tree, see the *Tree Protection*
14 *Act 2004*.

15 **[1.6] Section 257 (3) (k), note**

16 *substitute*

17 *Note* For restrictions on pruning etc a protected tree, see the *Tree Protection*
18 *Act 2004*.

19 **[1.7] Section 257A (f)**

20 *substitute*

21 (f) if the order sought relates to the pruning of a tree that is a
22 protected tree under the *Tree Protection Act 2004*—the
23 conservator; and

24 *Note* For restrictions on pruning etc a protected tree, see the *Tree Protection*
25 *Act 2004*.

Part 1.3 Roads and Public Places Act 1937

[1.8] New section 13 (5)

insert

- (5) A roads and public places officer must not give a notice under this section in relation to a protected tree under the *Tree Protection Act 2004* without the written consent of the conservator.

Part 1.4 Utilities Act 2000

[1.9] New section 105 (5)

insert

- (5) This section has effect in relation to a registered tree under the *Tree Protection Act 2004* subject to that Act, part 3 (Protection of trees).

Note Under the *Tree Protection Act 2004*, pt 3 it is an offence to damage a registered tree unless the damage is allowed under that Act.

[1.10] New section 106 (3)

insert

- (3) This section has effect in relation to a registered tree under the *Tree Protection Act 2004* subject to that Act, part 3 (Protection of trees).

Note Under the *Tree Protection Act 2004*, pt 3 it is an offence to damage a registered tree unless the damage is allowed under that Act.

[1.11] New section 125 (8A)

insert

- (8A) This section has effect in relation to a registered tree under the *Tree Protection Act 2004* subject to that Act, part 3 (Protection of trees).

Note Under the *Tree Protection Act 2004*, pt 3 it is an offence to damage a registered tree unless the damage is allowed under that Act.

- 1 **[1.12] Section 125**
- 2 *renumber subsections when Act next republished under Legislation*
- 3 *Act*

Dictionary

(see s 3)

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

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

- appoint
- conservator of flora and fauna
- contravene
- exercise
- function
- heritage council
- public employee.

advisory panel—see section 65 (Establishment of advisory panel).

approval criteria—see section 18.

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

authorised person means a person appointed as an authorised person under section 75.

built-up urban area—see section 7.

cancellation criteria—see section 42 (1).

connected, for part 10 (Enforcement)—see section 74.

conservator means the conservator of flora and fauna.

damage, to a protected tree, for part 3 (Protection of trees)—see section 12.

engage in conduct means—

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

- 1 ***heritage significance***—see the *Heritage Act 2004*, section 10.
- 2 ***land management agency***, for land where a tree is located, means
- 3 the entity responsible for managing the use of the land under a
- 4 Territory or Commonwealth law.
- 5 ***lopping***—see section 12.
- 6 ***major pruning***—see section 13.
- 7 ***occupier***, for part 10 (Enforcement)—see section 74.
- 8 ***offence***, for part 10 (Enforcement)—see section 74.
- 9 ***pollarding***—see section 12.
- 10 ***premises*** includes land.
- 11 ***prohibited groundwork***, for part 3 (Protection of trees)—see
- 12 section 14.
- 13 ***protected tree***—see section 8.
- 14 ***protection zone***, for a protected tree—see section 11.
- 15 ***provisionally register***, a tree, means provisionally register the tree
- 16 under section 45.
- 17 ***public land***—see the *Land (Planning and Environment) Act 1991*,
- 18 dictionary.
- 19 ***register***, a tree, means register the tree under section 51,
- 20 ***registered tree***—
- 21 (a) for part 6 (Tree register)—see section 37; and
- 22 (b) for the Act—see section 9.
- 23 ***registration criteria***—see section 42.
- 24 ***regulated tree***—see section 10.

1 ***restricted information*** means information restricted under
2 section 60 (Restricted non-Aboriginal information) or section 61
3 (Restricted Aboriginal information).

4 ***tree*** includes a palm tree.

5 ***tree management plan*** means a tree management plan approved
6 under section 32.

7 ***tree management precinct***—see section 10 (1).

8 ***tree protection direction***—see section 73.

9 ***tree register***—see section 37.

Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 2004.

2 **Notification**

Notified under the Legislation Act on 2004.

3 **Republications of amended laws**

For the latest republication of amended laws, see www.legislation.act.gov.au.
