

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Roslyn Dundas)

Nature Conservation (Native Vegetation Protection) Amendment Bill 2004

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Nature Conservation (Native Vegetation Protection) Amendment Bill 2004

A Bill for

An Act to amend the *Nature Conservation Act 1980*, 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 *Nature Conservation (Native Vegetation Protection)*
4 *Amendment Act 2004*.

5 **2 Commencement**

6 (1) This Act (other than sections 7, 8 and 9) commences on the day
7 after its notification day.

8 (2) Sections 7, 8 and 9 commence on the later of—

9 (a) the day after this Act's notification day; and

10 (b) the commencement of the *Environment Legislation*
11 *Amendment Act 2004*, part 2.

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

Part 2 Nature Conservation Act 1980

3 Legislation amended—pt 2

This part amends the *Nature Conservation Act 1980*.

4 New section 43A

insert

43A Commercial firewood collection—regulations

(1) The regulations may make provision about the clearing or removal of dead wood from any land for commercial firewood collection.

(2) In this section:

dead wood means any dead tree or part of a dead tree, whether or not it is—

(a) standing; or

(b) of a species indigenous to the ACT.

5 New part 5A

insert

Part 5A Clearing native vegetation outside reserved areas

Division 5A.1 General

45AAA Object of pt 5A

The object of this part is to ensure the long-term conservation of native vegetation and, in particular—

- 1 (a) to increase the overall area and quality of native vegetation in
2 the ACT by—
- 3 (i) reducing the incidence of clearing of native vegetation;
4 and
- 5 (ii) requiring the rehabilitation of degraded native vegetation
6 or the revegetation of cleared land to compensate for any
7 native vegetation lost because of approved clearing; and
- 8 (b) to protect native vegetation of high conservation value having
9 regard to its contribution to such matters as water quality,
10 biodiversity, and the prevention of salinity and land
11 degradation; and
- 12 (c) to improve the condition of existing native vegetation,
13 particularly where it has high conservation value; and
- 14 (d) to encourage the revegetation of land, and the rehabilitation of
15 land, with appropriate native vegetation; and
- 16 (e) to ensure that the area of native habitat in the ACT is not
17 reduced.

18 **45AAB Application of pt 5A**

19 This part does not apply to native vegetation in a reserved area.

20 **45AAC Meaning of *clearing* of native vegetation for pt 5A**

- 21 (1) In this part:
- 22 *clearing* native vegetation includes any of the following:
- 23 (a) cutting down, felling, thinning, logging or removing native
24 vegetation;
- 25 (b) burning native vegetation;
- 26 (c) doing anything else that kills or is likely to kill native
vegetation.

(2) Native vegetation is *cleared* in an area if—

(a) at least—

(i) 10% of the area is covered by native vegetation (whether living or dead) before the clearing; and

(ii) 50% of the vegetation cleared in the area consists of native vegetation; or

(b) the vegetation cleared in the area consists of at least 3 trees per hectare that are—

(i) of a species indigenous to the ACT; and

(ii) at least 10m high.

45AAD Meaning of clearing causing *serious harm* for pt 5A

The clearing of native vegetation in an area causes *serious harm* to the area if—

(a) it causes the loss of an endangered ecological community or part of an endangered ecological community; or

(b) the total area cleared of native vegetation is more than 2 hectares; or

(c) it happens in a Ramsar wetland.

45AAE Meaning of clearing causing *material harm* for pt 5A

The clearing of native vegetation in an area causes *material harm* to the area if the total area cleared of native vegetation is more than 0.2 hectares but not more than 2 hectares.

**Division 5A.2 Offences of clearing native vegetation
outside reserved areas**

45AAF Clearing causing serious harm

- (1) A person commits an offence if—
- (a) the person clears native vegetation in an area; and
 - (b) the clearing causes serious harm to the area.
- Maximum penalty: 1 000 penalty units.
- (2) An offence against this section is a strict liability offence.

45AAG Clearing causing material harm

- (1) A person commits an offence if—
- (a) the person clears native vegetation in an area; and
 - (b) the clearing causes material harm to the area.
- Maximum penalty: 500 penalty units.
- (2) An offence against this section is a strict liability offence.

45AAH Contravention of approved vegetation management plan

- (1) A person commits an offence if the person—
- (a) is a landholder subject to a vegetation management plan approved under division 5A.5; and
 - (b) contravenes a requirement under the plan to do, or not do, something.
- Maximum penalty: 100 penalty units.
- (2) An offence against this section is a strict liability offence.

45AAI Territory may recover costs

- (1) In a prosecution for an offence against section 45AAF or section 45AAG, the court may, in addition to the penalty that may be imposed, order the defendant to pay to the Territory the amount of any reasonable costs incurred or to be incurred by the Territory in making good the damage caused by the clearing.
- (2) In a prosecution for an offence against section 45AAH, the court may, in addition to the penalty that may be imposed, order the defendant to pay the Territory the amount of any reasonable costs incurred or to be incurred by the Territory in satisfying the relevant requirement under the approved vegetation management plan.
- (3) Where the court makes an order under subsection (1) or (2), the same proceedings may be taken in relation to the order as if it were a judgment of the court entered in civil proceedings in favour of the Territory.

**Division 5A.3 Clearing of native vegetation—
permitted clearing****45AAJ Permitted clearing**

Division 5A.2 does not apply to the clearing of native vegetation permitted under this division.

45AAK Routine agricultural management activities

- (1) Clearing native vegetation for routine agricultural management activities is permitted.
- (2) However, this section does not authorise any clearing of native vegetation if—
- (a) it exceeds the minimum extent necessary for carrying out the activity; or

- 1 (b) it is done for work or a building or structure before the grant of
2 any statutory approval or other authority required for the work,
3 building or structure.
- 4 (3) The continuation of existing cultivation, grazing or rotational
5 farming practices is permitted if it does not involve the clearing of
6 remnant native vegetation.
- 7 (4) Grazing that is not likely to result in substantial long-term decline in
8 the structure and composition of native vegetation is permitted.

9 **45AAL Clearing to avoid imminent risk**

10 Clearing of native vegetation is permitted where it is necessary and
11 appropriate to avoid an imminent risk of—

- 12 (a) serious harm to a person; or
13 (b) substantial damage to property.

14 **45AAM Statutory authority**

15 The following clearing of native vegetation is permitted:

- 16 (a) clearing in accordance with a vegetation management plan
17 approved under division 5A.5;
- 18 (b) clearing in accordance with a licence under this Act for the
19 purpose of scientific research;
- 20 (c) clearing authorised under the *Emergencies Act 2004*;
- 21 (d) clearing under the *Roads and Public Places Act 1937*,
22 section 13 (Trees etc overhanging public places);
- 23 (e) necessary clearing for a survey done or supervised by a
24 surveyor under the *Surveyors Act 2001*;

- 1 (f) necessary clearing for network operations under the *Utilities*
2 *Act 2000*.

3 *Note* This Act does not apply to functions exercised under the *Emergencies*
4 *Act 2004* for the purpose of protecting life or property, or controlling,
5 extinguishing or preventing the spread of fire (see s 6).

6 **Division 5A.4 Clearing of native vegetation—land**
7 **development**

8 **45AAN Definitions for div 5A.4**

9 In this division:

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

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

14 **45AAO Approved clearing for developments**

15 Division 5A.2 does not apply to the clearing of native vegetation
16 approved under this division.

17 **45AAP Conservator's approval needed for development clearing**

- 18 (1) This section applies to a development that involves the clearing of
19 0.2 hectares, or more, of native vegetation.
- 20 (2) The development application must not be approved under the Land
21 Act unless the clearing is approved by the conservator under this
22 division.

23 **45AAQ Approval by conservator**

- 24 (1) The conservator may, in writing, approve or refuse to approve, the
25 clearing of native vegetation for a development.

- 1 (2) An approval may be subject to stated conditions and must include a
2 requirement for compliance with a vegetation management plan
3 approved under division 5A.5.
- 4 (3) A vegetation management plan may require revegetation or
5 rehabilitation of areas of native vegetation on land other than the
6 land subject to clearing.
- 7 (4) In making a decision under subsection (1), the conservator must
8 consider the following:
- 9 (a) the extent of harm to the natural environment that would be
10 caused by the clearing;
- 11 (b) whether there are practicable ways of avoiding or minimising
12 the loss of native vegetation because of the clearing;
- 13 (c) any matters prescribed under the regulations;
- 14 (d) any other matter the conservator considers relevant.

15 **Division 5A.5 Vegetation management plans**

16 **45AAR Landholders may submit plans**

- 17 (1) A person may submit a draft vegetation management plan to the
18 conservator for approval under this division.
- 19 (2) A draft plan cannot be submitted for approval without the consent in
20 writing of—
- 21 (a) each landholder to which the plan applies; and
- 22 (b) any person who has an interest in the land prescribed under the
23 regulations.
- 24 (3) A draft plan must comply with any other requirement prescribed
25 under the regulations about the form or content of the draft plan.

1 **45AAS Plans require conservator's approval**

- 2 (1) A vegetation management plan has effect for this part only if it is
3 approved by the conservator.
- 4 (2) In deciding whether to approve a draft plan, the conservator must
5 apply the following principles:
- 6 (a) native vegetation must be protected and conserved to reduce
7 the incidence of land degradation and deterioration in water
8 quality and provide habitats for plants and animals;
- 9 (b) biodiversity at the regional level and the productivity of the
10 land must be maintained;
- 11 (c) sustainable management of vegetation is reliant on the active
12 participation of individual landholders and resource managers,
13 and landholders' acceptance of their obligation to manage the
14 land sustainably;
- 15 (d) vegetation management planning at a regional level is needed
16 in addressing and integrating issues such as biodiversity,
17 conservation, land and water protection and ecologically
18 sustainable and profitable land use;
- 19 (e) the best available scientific information and continuous
20 improvement in the information base should underpin the
21 regulatory system;
- 22 (f) revegetation and land rehabilitation must be encouraged;
- 23 (g) each vegetation management plan must, to the fullest extent,
24 attempt to provide for no net loss of native vegetation on the
25 land to which it applies;
- 26 (h) there must not be any net loss in the native vegetation in the
27 ACT reviewed on an annual basis.

1 **45AAT Consultation with Flora and Fauna Committee**

2 Before deciding whether to approve or refuse to approve a
3 vegetation management plan, the conservator must consult and
4 consider the views of the Flora and Fauna Committee about the draft
5 plan.

6 **45AAU Content of plans**

7 (1) A vegetation management plan must make provision for native
8 vegetation management on the land to which it applies, including
9 the following:

- 10 (a) any proposals for clearing native vegetation on the land;
11 (b) any proposals relating to the continuation of existing routine
12 agricultural practices;
13 (c) provisions about excluding any clearing for routine agricultural
14 management, or other activities, from being permitted clearing;
15 (d) any proposals to revegetate or rehabilitate other areas of native
16 vegetation;
17 (e) any other provisions prescribed under the regulations.

18 (2) A vegetation management plan may include a requirement to
19 revegetate or rehabilitate areas of native vegetation on land other
20 than to which the plan applies.

21 (3) A vegetation management plan may include, or be part of, a plan of
22 management under the Land Act, division 5.7 (Public land).

23 **45AAV Public notice of approved plan**

24 (1) An approved vegetation management plan is a notifiable instrument.

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

- 1 (2) The conservator must publish a notice about the approval of a
2 vegetation management plan in a daily newspaper within 3 days
3 after the day of the approval.

4 **45AAW Duration of plans**

- 5 (1) A vegetation management plan has effect for the period (not more
6 than 30 years) stated in the plan.
- 7 (2) A vegetation management plan—
- 8 (a) may be varied by a landholder to whom it applies with the
9 approval of the conservator; and
- 10 (b) may be terminated in accordance with the regulations if the
11 landholder contravenes a requirement of the vegetation
12 management plan.
- 13 (3) The regulations may make provision for reviews of vegetation
14 management plans after 10 years.

15 **45AAX Registered plan runs with land**

- 16 (1) An approved vegetation management plan attaches to the land to
17 which it applies and is binding on the owner of the land for the time
18 being.
- 19 (2) The conservator must lodge a copy of each approved vegetation
20 management plan, and any variation or ending of the plan, with the
21 registrar-general for registration under the *Land Titles Act 1925*.
- 22 (3) The conservator must ensure as far as practicable that the copy of
23 the plan is lodged with the registrar-general in registrable form.

24 *Note* The *Land Titles Act 1925* provides for the registrar-general to register a
25 plan mentioned in s (2) under that Act (see s 48).

1 **45AAY Enforcement order**

2 A party to an approved vegetation management plan may apply to
3 the Supreme Court for an enforcement order to give effect to the
4 plan if—

- 5 (a) someone contravenes a requirement of the plan; or
6 (b) there are reasonable grounds for believing that someone may
7 contravene a requirement of the plan.

8 *Note* **Contravene** includes fails to comply with (see Legislation Act,
9 dict, pt 1).

10 **Division 5A.6 AAT review of decisions**

11 **45AAZ Reviewable decisions**

12 Each of the following is a reviewable decision:

- 13 (a) a decision by the conservator to approve or refuse to approve
14 the clearing of native vegetation for a development under
15 section 45AAQ;
16 (b) a decision by the conservator to approve or refuse to approve a
17 vegetation management plan under section 45AAS;
18 (c) a decision by the conservator to approve or refuse to approve a
19 variation of a vegetation management plan under
20 section 45AAW.

21 **45AAZA Notice of reviewable decisions**

- 22 (1) The conservator must use his or her best endeavours to give written
23 notice of each reviewable decision to each person whose interests
24 are affected by the decision.
25 (2) The notice must comply with the requirements of the code of
26 practice in force under the *Administrative Appeals Tribunal*
27 *Act 1989*, section 25B (1).

(3) In particular, the notice must tell the person—

(a) that a person whose interests are affected by the decision may apply to the administrative appeals tribunal for review of the decision, and how the application must be made; and

(b) about options available under other Territory laws to have the decision reviewed by a court or the ombudsman.

45AAZB Review of decisions by AAT

A person may apply to the administrative appeals tribunal for review of a reviewable decision.

6 Conservation directions **Section 47 (1)**

substitute

(1) The conservator may give the occupier of land directions for the protection or conservation of native animals, native vegetation, native plants and native timber on the land.

(1A) Without limiting subsection (1), a direction may relate to compliance with a requirement under a vegetation management plan approved under division 5A.5.

7 Section 60B

omit

8 Section 60L, heading

substitute

60L Meaning of damage for div 8.3

9 Section 60L, definition of cause

omit

10 Dictionary, new definitions

insert

cause, serious or material harm, means substantially contribute directly or indirectly to the harm.

clearing—

(a) for part 5A (Clearing native vegetation outside reserved areas)—see section 45AAC; and

(b) for division 8.2 (Clearing native vegetation in reserved areas)—see section 60C; and

(b) for division 8.3 (Damaging land in reserved areas)—see section 60L.

existing rotational farming practices means rotational farming practices that—

(a) are reasonable and in accordance with accepted farming practice; and

(b) are in place before the commencement of this Act.

native vegetation means any of the following kinds of vegetation indigenous to the ACT:

(a) trees;

(b) understorey plants;

(c) groundcover consisting any kind of grass or herbaceous vegetation;

(d) plants occurring in a wetland or stream.

Ramsar wetland means a declared Ramsar wetland under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), section 17.

- 1 ***routine agricultural management activities*** means any of the
2 following activities on land carried out by or for the landholder:
- 3 (a) the construction, operation or maintenance of rural
4 infrastructure including (subject to the regulations) dams,
5 permanent fences, buildings, windmills, bores, stockyards and
6 farm roads;
- 7 (b) the removal of pest plants under the *Land (Planning and*
8 *Environment) Act 1991*;
- 9 (c) the control of pest animals under the *Land (Planning and*
10 *Environment) Act 1991*;
- 11 (d) the collection of firewood and fencing material (except for
12 commercial purposes);
- 13 (e) the harvesting or other clearing of native vegetation planted for
14 commercial purposes;
- 15 (f) any other activity prescribed under the regulations.

1 **Part 3** **Land (Planning and**
2 **Environment) Act 1991**

3 **11 Legislation amended—pt 3**

4 This part amends the *Land (Planning and Environment) Act 1991*.

5 **12 New section 165**

6 *insert*

7 **165 Subdivisions affecting native vegetation**

8 (1) This section applies to a proposed subdivision of an area of land
9 that—

10 (a) contains an area of native vegetation greater than 0.2 hectares;
11 or

12 (b) has a boundary that runs through an area of native vegetation
13 greater than 0.2 hectares.

14 (2) The planning and land authority must not grant a lease of any part of
15 the area unless there is a vegetation management plan approved
16 under the *Nature Conservation Act 1980*, section 45AAS for—

17 (a) the undivided area mentioned in subsection (1); or

18 (b) each subdivided part of the area mentioned in subsection (1).

19 **13 Section 229 (4) (c)**

20 *substitute*

21 (c) must give to the conservator for comment a copy of each
22 application that relates to public land; and

- 1 (ca) must give to the conservator a copy of each application that
2 involves the clearing of native vegetation to which the *Nature*
3 *Conservation Act 1980*, part 5A (Clearing of native vegetation
4 outside reserved areas) applies; and

5 **14 Section 230 (1), new note**

6 *insert*

- 7 *Note* The relevant authority must not approve a development that involves
8 the clearing of 0.2 hectares, or more, of native vegetation unless the
9 clearing is approved by the conservator under the *Nature Conservation*
10 *Act 1980* (see section 45AAP)

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.
