

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

TREE PROTECTION BILL 2001

EXPLANATORY MEMORANDUM

Circulated with the authority of
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Minister for Urban Services

EXPLANATORY MEMORANDUM

Outline

This Bill provides for the establishment of a Significant Tree Register and protection for trees likely to be included on a Significant Tree Register. It also provides a 12 month continuation of the interim protection of defined significant trees that was provided by the *Tree Protection (Interim Scheme) Act 2001* to allow for the protection of significant trees until the register can be established.

The objectives of the Bill are to:

- establish the status of the Register in legislation;
- define the content of the Register;
- establish and define the functions of a significant tree assessment committee;
- define the process for entering a tree on to the Register;
- empower the Conservator to enter and remove trees from the Register;
- define what constitutes a 'tree damaging activity';
- establish an approvals system to permit a tree damaging activity to be undertaken on a significant tree and empower the Conservator to issue such approvals;
- establish appeal rights to the AAT; and
- establish penalties for undertaking a tree damaging activity without approval from the Conservator.
- define powers of authorised persons, including powers of entry and powers to investigate offences and collect evidence

Revenue/Cost Implications

There is no additional cost involved in the Bill as all infrastructure required is either in place or will be provided from within existing resources.

Formal Clauses

PART 1- PRELIMINARY:

Clauses 1 and 2 are formal requirements. They deal with the short title of the Bill and commencement provisions.

Clause 3 provides for a dictionary of terms used within the Bill and notifies that the dictionary is located at the end of the Bill.

Clause 4 advises that the Notes included within the Bill are explanatory and do not form part of the Act.

Clause 5 ensures that trees identified for removal in:

- development approvals current at the time of the commencement of the Act;
- development applications lodged but not determined before the commencement of the Bill; and
- a lease documents where the condition was in force immediately before the commencement of the Bill;

will be exempt from protection under this Bill. This ensures that the law applying to any application or sale of land is the law that is in force at the time that the application is lodged or the sale takes place.

PART 2 - PROTECTION OF TREES

Clause 6 defines the meaning of a significant tree for the purposes of the Bill.

Clause 7 defines the tree damaging activities from which this Bill protects significant trees. The definition is intended to control activities including root damage that would kill the tree, lead to a decline in the health of the tree or disfigure the appearance of the tree. It is not intended to include maintenance pruning that is not likely to adversely affect the general health and appearance of a tree.

Clause 8 makes it an offence to undertake a tree damaging activity on a significant tree without approval. It also describes situations where the offence does not apply.

Clause 9 requires a person who damages a significant tree in urgent circumstances such as an emergency, to notify the Conservator of the damage. This will allow the conservator to make appropriate amendments to the Significant Tree Register. It also specifies what information must be provided to the Conservator.

Clause 10 allows exemptions to be given to persons or entities to undertake tree damaging activities without approval from the Conservator of Flora and Fauna. The regulations can also exempt particular tree-damaging activities from the Bill.

Clause 11 provides protection to all trees on unleased Territory land or land occupied by the Territory. This clause has been removed from the *Trespass on Territory Land Act 1932* and inserted in this Bill. The penalty has been increased from 20 penalty units to 50 penalty units to make it consistent with the penalty applying to the damage or destruction of native trees in the *Nature Conservation Act 1980*.

PART 3 - APPROVED ACTIVITIES

Division 3.1 – Register of approved activities

Clause 12 requires the Conservator to keep a register of approvals and states what information must be contained in the register. It also allows for the correction of errors found in the register

Clause 13 allows for free public access to the approvals register and allows a person to take a copy of the register upon the payment of a fee.

Division 3.2 – Approvals

Clause 14 allows the Minister to determine '*Criteria for Approval to Undertake a Tree Damaging Activity*'. It also requires that these criteria be determined by disallowable instrument.

Clause 15 outlines the process for applying to the conservator for approval to undertake a tree damaging activity on a significant tree.

Clause 16 allows the conservator to require an applicant to provide additional information or documents to enable the conservator to decide an application. Where the conservator has requested but not received this further information the clause allows the conservator to refuse to further consider the application.

Clause 17 allows the Conservator to approve a tree damaging activity. It requires the conservator to establish that the application meets the '*Criteria for Approval to Undertake a Tree Damaging Activity*' and in the case of an application to remove a tree, to seek the advice of the significant tree assessment committee before granting an approval. It also allows the Conservator to seek the advice of the committee with regard to applications for other types of tree damaging activities and requires the Conservator to have regard to the advice provided by the committee in making a decision on the application. Conditions may be applied to the approval under this clause.

Clause 18 requires the Conservator to maintain a register of approvals and describes what information must be entered onto the register for each approval.

Clause 19 defines when the approval takes effect.

Clause 20 defines in what circumstances the conservator must give the significant tree assessment committee written notice of an approval given to undertake a tree damaging activity.

Clause 21 defines a minimum term of 1 year for an approval to undertake a tree damaging activity unless otherwise specified in the approval.

Clause 22 outlines the grounds on which the conservator can cancel an approval and sets out when the assessment committee either must or may be consulted. It requires the Conservator to have regard to any advice received.

Clause 23 describes when the cancellation of an approval takes effect.

Division 3.3 – Notices of approval decisions etc

Clause 24, 25 and 26 deal with who has to be notified about a decision by the conservator to approve or reject an application to undertake a tree damaging activity, what is a notifiable decision, and the nature of that notice.

PART 4 - REGISTRATION OF SIGNIFICANT TREES

Division 4.1 – Register of significant trees

Clause 27 requires the conservator to maintain a register of significant trees and amend the register to correct errors.

Clause 28 allows for free public access to the Significant Tree Register.

Division 4.2 - Registration

Clause 29 allows for the Minister to determine criteria for registration of a significant tree as a disallowable instrument.

Clause 30 describes the grounds on which a tree can be registered as significant. It requires the conservator to seek the advice of the significant tree assessment committee and establish that the tree meets the 'criteria for the registration of tree as a significant tree' before registering a tree as significant.

Clause 31 defines who can initiate the registration of a significant tree.

Clause 32 prescribes what information must be entered in relation to each tree or group of trees.

Clause 33 requires the conservator to define a protection zone for the tree within which tree-damaging activities are prohibited. It also allows for the definition of the protection zone to be changed.

Clause 34 defines the date on which any redefinition of the protection zone by the Conservator takes effect.

Clause 35 provides for the Conservator to remove a tree from the Significant Tree Register and cancel the registration and requires the Conservator to first

consult and have regard to any report of the assessment committee before making a decision.

Clause 36 defines when a cancellation of registration takes effect.

Division 4.3 – Provisional Registration

Clause 37 describes under what circumstances a tree can be provisionally registered.

Clause 38 describes the process of provisional registration and defines what information must be included in the register.

Clause 39 requires the conservator to define a protection zone for the tree within which tree-damaging activities are prohibited and allows for changes in the definition.

Clause 40 defines the date on which any redefinition of the protection zone by the Conservator for a provisionally registered tree takes effect.

Clause 41 sets the period of provisional registration and under what circumstances the provisional registration expires.

Clause 42 defines when the Conservator can remove a tree from the provisional register and cancel the registration.

Clause 43 defines when a cancellation of provisional registration takes effect.

Division 4.4 – Notices about registration decision

Clause 44, 45, 46 and 47 define what are notifiable decisions, who should be notified of a decision by the conservator to register a significant tree or provisionally register a significant tree and what information must be provided in the notification.

PART 5 - SIGNIFICANT TREE ASSESSMENT COMMITTEE

Division 5.1 – Establishment and membership

Clauses 48, 49, 50, 51, and 52 provide for the establishment of a Significant Tree Assessment Committee to advise the conservator on matters relating to the registration of significant trees and applications to undertake a tree damaging activity. It sets the size of the committee and the experience required of the members in arboriculture, natural and cultural heritage and landscape architecture. It also deals with administrative matters in relation to committee chairperson and conditions of appointment.

Division 5.2 – Proceedings of Committee

Clauses 53, 54, and 55 deal with the time and place of meetings, procedures governing proceedings of the committee and disclosure of interests by members of the committee. In particular they require the committee to meet at least 4 times a year and allow for resolutions to be made 'out of session' where an urgent advice is required.

PART 6 – ENFORCEMENT

Division 6.1 - General

Clause 56 sets out the interpretation of various terms used within this Division.

Clause 57 identifies what things can be connected with an offence within this Division of the Bill.

Division 6.2 - Authorised persons

Clauses 58 and 59 allow for the appointment of authorised persons for the Bill and the issuing of identity cards to those persons.

Division 6.3 – Powers of authorised persons

Clauses 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70, stipulate the requirements under various circumstances for an authorised officer to enter premises:

- For a routine inspection with consent;
- With a search warrant; or
- In an emergency situation (warrant application made other than in person).

The provisions set out the powers of an authorised officer to inspect the premises after producing their identity card. The procedure for obtaining a search warrant is prescribed as well as the power of the authorised officer to require a person to give their name and address if reasonably suspected of committing an offence under the Bill. Powers and procedures regarding the seizure of evidence are also prescribed.

Division 6.4 - Miscellaneous

Clause 71 modifies the effect of the general privilege against selfincrimination for the purposes of evidence obtained under Part 6 of the Bill.

Clause 72 enables a person to claim professional privilege in relation to the requirement to make information available or answer a question.

Clause 73, 74 and 75 create the offences of:

- providing false or misleading information;
- providing false or misleading documents; and
- hindering or obstructing an authorised person.

The penalty for breaching these clauses is a penalty of 50 penalty units, or imprisonment for 6 months or both.

Clause 76 deals with the minimisation of damage by an authorised officer when carrying out their functions under this part.

Clause 77 entitles a person who suffers loss or expense as a result of performance of a function under this part to compensation and deals with administrative matters associated with this.

PART 7 – REVIEW OF DECISIONS

Clause 78 sets out the decisions that are reviewable under this Bill by the Administrative Appeals Tribunal and who may make an appeal.

PART 8 MISCELLANEOUS

Clause 79 is a provision that allows the Minister to determine fees by disallowable instrument.

Clause 80 allows for the Minister to approve forms for use under this Bill.

Clause 81 deals with the delegation of the Conservators functions and prescribes which functions cannot be delegated. This provision has been inserted to allow approvals to prune significant trees to be given by qualified arborists or tree surgeons under a private certificate process without prior reference to the conservator.

Clause 82 allows for the executive to make regulations for this Bill and prescribes a maximum penalty for offences against the regulations.

PART 9 – TRANSITIONAL PROVISIONS

Clause 83 repeals the *Tree Protection (Interim Scheme) Act 2001*

Clause 84 provides for certain determined criteria, applications and approvals made or given under the *Tree Protection (Interim Scheme) Act 2001* to have effect under this Bill.

Division 9.2 – Interim protection of unregistered, significant trees

Clause 85 describes a category of trees, which are defined as significant for a term of 12 months after the commencement of the Bill. The intent is to ensure that protection is provided to the trees on non rural leased land which may be found to be significant when the Significant Tree Register is established. It also defines under what circumstances the protection does not apply.

Clause 86 defines the protection zone applying to unregistered significant trees as defined in this Division within which tree-damaging activities are prohibited.

Division 9.3 – Expiry of this part

Clause 87 provides for the expiry of this interim protection 12 months after commencement of the Bill unless otherwise prescribed by regulation.

PART 10 – CONSEQUENTIAL AMENDMENTS

Clause 88 establishes a schedule of Acts amended.

SCHEDULE 1 CONSEQUENTIAL AMENDMENTS OF OTHER LAWS

Part 1 – Land (Planning and Environment) Act 1991

Section 229 (4) (aa) substitutes into the *Land (Planning and Environment) Act 1991* a clause to require the mandatory referral to the Conservator of any development application relating to land on which there is a significant tree that is planned to be removed or damaged as part of the development.

Part 2 – Trespass on Territory Land Act 1932

Section 7 substitutes a clause, which has had removed from it the specific reference to tree, because the protection provided is now provided by this Bill. It also increases the penalty for damaging plants, plantations etc from 20 to 50 penalty points to make it consistent with the penalty applying to the damage of trees generally in section 9 of this Bill and to the damage or destruction of native trees in the *Nature Conservation Act 1980*.

Dictionary – defines the terms used within this Bill.