

2017

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

TREE PROTECTION AMENDMENT BILL 2017

EXPLANATORY STATEMENT

**Presented by
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INTRODUCTION

This explanatory statement relates to the Tree Protection Amendment Bill 2017 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

This statement must be read in conjunction with the bill. It is not, and is not intended to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW

The purpose of the bill is to correct an anomaly in the merit review provisions and to provide discretion to the conservator of flora and fauna to cancel the registration of a tree where a tree has died of natural causes.

The amendments do not create new offences, obligations or duties.

Amendments

In a decision of the ACT Civil and Administrative Tribunal (ACAT) it was identified that under law, no entity had a right of merits review in a decision about the cancellation or the refusal to cancel the registration of a tree.

This was not the intention of the legislature given that the descriptor of the entity was of itself the source of the problem resulting in no effective merits review mechanism.

This anomaly is corrected by the amendments which extend merits review of the decision to all entities that are directly affected by the decision and whose interests could be significantly affected or disadvantaged by the decision.

The amendments also provide a technical amendment allowing for the conservator to cancel the registration of a tree when a tree dies from natural causes without following the full cancellation process as detailed in law.

Human rights implications – merits review

Merits review by an independent third party enhances the accountability of regulators and promotes better decision-making over time.

Merits review routinely entails the reconsideration of an administrative decision. Access to merits review is only available when legislation specifically allows for the reconsideration of a decision.

In the Territory, merits review of administrative decisions is generally undertaken by the ACT Civil and Administrative Tribunal (ACAT). In this

setting, ACAT makes decisions within the same legislative framework as the primary decision maker and may exercise all the powers and discretions conferred on the primary decision maker.

It is generally accepted that enactments should not make rights, liberties or obligations unduly dependent on non-reviewable administrative decisions.

The bill positively engages human rights in that it provides an accountability mechanism for independent merits review of administrative decisions that can significantly affect the interests of individuals and other entities.

The Administrative Review Council has stated that review mechanisms of themselves do not result in the imposition of unnecessary red tape or additional burdens on business but rather enhances accountability and the efficiency of administrative decision making.¹

OUTLINE OF PROVISIONS

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Tree Protection Amendment Act 2017*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act will commence on the day after its notification day.

Clause 3 Legislation amended

This clause provides that the Act amends the *Tree Protection Act 2005*.

Clause 4 New division 7.4

This clause inserts a new Division 7.4 (death of tree from natural causes). The division includes section 61A – 61D.

New section 61A (Application – div 7.4) provides that the division applies if the conservator of flora and fauna is satisfied that a registered tree has died of natural causes.

New section 61B (Cancellation of registration of dead tree) provides that the conservator may cancel the registration of a tree if division 7.3 does not apply to the cancellation. Division 7.3 (Cancellation of registration) provides the

¹ Administrative Review Council, *Administrative accountability in business areas subject to complex and specific regulations*, November 2008

procedures by which a person can propose that the registration of a tree can be cancelled.

New section 61C (Notice of cancellation of registration of dead tree) requires the conservator to give written notice of a decision made under new section 61B to the lessee of the land or the land management agency for the land where the tree is located and adjoining properties if the tree is within 50m. The conservator can also give written notice to anyone else that the conservator considers appropriate. The conservator must also give public notice of the decision which means that notice is provided on the ACT government website or in a daily newspaper.

New section 61D (Cancellation of registration of dead tree – tree register) provides that following a decision to cancel the registration of a tree under new section 61B the conservator must remove the entry about the tree from the tree register.

Clause 5 Reviewable decisions Schedule 1, part 1.2, items 1 and 2

This clause replaces items 1 and 2 of schedule 1 part 1.2.

The specific change is to the entities that have merits review rights in relation to decisions made under section 52 and section 58 of the Act.

A decision by the conservator under section 52 (item 1) relates to the decision to approve or refuse to approve the registration of a tree under the Act. Item 1 provides that a person given written notice under section 53(1)(a), (b), (c) or (e) has a right to seek review under section 107B of the Act.

A decision by the conservator under section 59 (item 2) relates to the cancellation, or refusal to cancel, registration of a tree. Item 2 provides that a person who has been given written notice under section 58(1)(a), (b), (c) or (e) has a right to seek review under section 107B of the Act.