

1997
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Tucker)

**Nature Conservation (Amendment) Bill
1997**

**A BILL
FOR**

An Act to amend the *Nature Conservation Act 1980*

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

Short title

- 5 1. This Act may be cited as the *Nature Conservation (Amendment) Act 1997*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

- 10 3. In this Act, "Principal Act" means the *Nature Conservation Act 1980*.¹

Job No.: 1996/193

Interpretation

4. Section 5 of the Principal Act is amended by adding “or an ecological community” at the end of the definition of “special protection status”.

5 **Conservator of Flora and Fauna**

5. Section 7 of the Principal Act is amended by adding at the end the following subsection:

“(4) The Conservator shall be a person having appropriate qualifications and experience in the conservation of flora and fauna.”.

10 **Special protection status**

6. Section 16 of the Principal Act is amended—

(a) by inserting in subsection (2) “or an ecological community” after “plant”; and

15 (b) by inserting in paragraphs (2) (a) and (b) “or community” after “species”.

Preservation of native timber

7. Section 43 of the Principal Act is amended—

(a) by omitting subsections (1) and (2) and substituting the following subsections:

20 “(1) A person shall not—

(a) except in accordance with a licence; or

(b) unless he or she has a reasonable excuse;

fell or cause to be felled or damage or cause to be damaged standing native timber—

25 (c) on leased or unleased land outside the built-up area; or

(d) on leased or unleased land in the built-up area where—

(i) the timber is 5 metres or over in height; or

(ii) the timber is 300 millimetres or over in diameter.

Penalty: 100 penalty units.

30 “(2) In subparagraph (1) (d) (ii)—

‘diameter’ means—

- 5
- (a) where the timber has 1 trunk—the diameter of the trunk measured 1 metre from the ground; or
 - (b) where the timber has 2 or more trunks—the sum of the diameter of each trunk measured 1 metre from the ground.

“(2A) Subsection (1) does not apply in relation to—

- 10
- (a) felling of native timber on leased land where the person responsible for the felling reasonably believes the felling is necessary to avert an immediate danger of injury to a person or damage to property;
 - (b) pruning or trimming native timber to the minimum extent necessary—
 - 15 (i) to comply with any requirement under a law of the Territory; or
 - (ii) to prevent interference with a building or an electricity or telecommunications cable or wire; or
 - (c) felling or damage of native timber on leased land outside the built-up area where the timber was planted by or on behalf of an occupier and felled or damaged by or on behalf of that occupier or a subsequent occupier.
- 20

“(2B) An arborist or forester who provides a report under subsection 61 (1A) in relation to standing native timber shall not fell or damage that timber.

Penalty: 50 penalty units.”; and

- 25
- (b) by omitting from the penalty at the foot of subsection (3) “50” and substituting “100”.

Insertion

8. After Part IV of the Principal Act the following Part is inserted:

30

“PART IVA—PROTECTION OF ECOLOGICAL COMMUNITIES

Threatening process—ecological communities

“45AAA. A person shall not, except in accordance with a licence, engage in a threatening process in relation to an ecological community that has special protection status.

- 35
- Penalty: 100 penalty units or imprisonment for 12 months, or both.”.

Entry onto land for purpose of carrying out examination

9. Section 46 of the Principal Act is amended—

- (a) by omitting from subsection (1) “or native plants” and substituting
“, native plants or ecological communities”; and
- 5 (b) by omitting from subsection (1) “or plants” and substituting
“, plants or communities”.

Conservation directions

10. Section 47 of the Principal Act is amended—

- 10 (a) by omitting from subsection (1) “and native timber” and
substituting “, native timber and ecological communities”; and
- (b) by inserting in paragraph (a) of the penalty at the foot of subsection
(3) “or ecological communities” after “plants”.

Insertion

15 11. Before section 61 of the Principal Act the following section is
inserted in Part VII:

Interpretation

“60AF. In this Part—

20 ‘ecological community licence’ means a licence to engage in a
threatening process in relation to an ecological community having
special protection status;

‘standing native timber licence’ means a licence to fell or damage
standing native timber on leased land in or outside the built-up
area.”

Application

25 12. Section 61 of the Principal Act is amended by inserting after
subsection (1) the following subsection:

30 “(1A) An application for the grant of a licence to fell or damage
standing native timber shall, in addition to the requirements under subsection
(1), be accompanied by a report by a person who has qualified for a degree,
diploma or certificate in arboriculture or forestry stating whether or not, in
his or her opinion, the applicant is justified in felling or damaging the
timber.”.

Insertion

35 13. After section 61 of the Principal Act the following sections are
inserted:

Notice of applications

5 “61A. (1) After receiving an application for the grant of a standing native timber licence or an ecological community licence, the Conservator shall cause a notice stating the details of the application and the effect of section 61B—

(a) to be sent by post—

(i) if a place adjoining the place to which the application relates—

10 (A) is occupied—to the lessee of each adjoining place at the address of the adjoining place; or

(B) is unoccupied—to the lessee of the adjoining place at the address of the lessee last known to the Conservator; and

(b) to be published in a newspaper.

15 “(2) If the Conservator publishes a notice under paragraph (1) (b), the reasonable cost of the notice is a debt payable by the applicant to the Territory.

Objections

20 “61B. (1) Any person who may be affected by the approval of an application for the grant of a standing native timber licence or an ecological community licence may, within 21 days, object to the grant of the licence.

“(2) An objection shall be made to the Conservator in writing and shall set out the grounds of the objection.

25 “(3) The Conservator shall give a copy of each objection to the applicant.”.

Conditions

14. Section 63 of the Principal Act is amended by inserting in paragraph (1) (b) “or ecological communities” after “species”.

Insertion

30 15. After section 63 of the Principal Act the following section is inserted:

Relevant considerations

35 “63A. In making a decision under section 62 in relation to an application for a standing native timber licence or an ecological community licence, the Conservator shall consider any objections made in accordance with section 61B.”.

Licensing criteria

16. Section 64 of the Principal Act is amended by inserting in paragraph (3) (a) "or ecological communities" after "species".

Insertion

5 17. After section 64 of the Principal Act the following section is inserted:

Date of effect of certain licences

"64A. (1) A standing native timber licence or an ecological community licence shall commence—

10 (a) where no appeal to the Administrative Appeals Tribunal has been made—on the day after the last day on which application may be made to the Administrative Appeals Tribunal for review of the decision of the Conservator under section 62 or subsection 63 (4); or

15 (b) where an appeal has been made—on the day after the day on which—

(i) the decision of the Administrative Appeals Tribunal or a court relating to the decision of the Conservator under section 62 or subsection 63 (4) has become final; or

20 (ii) the Administrative Appeals Tribunal or a court has set aside the decision of the Conservator under section 62 or subsection 63 (4).

25 "(2) For the purposes of subparagraph (1) (b) (i), a decision of the Administrative Appeals Tribunal or a court referred to in that subparagraph is to be taken to have become final if no application for review has been made, or appeal instituted, within 21 days after the date of the decision.

30 "(3) In the application of section 27 of the *Administrative Appeals Tribunal Act 1989* in relation to a decision under section 62 or subsection 63 (4) concerning a standing native timber licence or an ecological community licence, a reference in that section to the 28th day shall be read as a reference to the 21st day."

Notification of decisions

18. Section 74A of the Principal Act is amended by adding at the end the following subsections:

35 "(3) The Conservator shall, in addition to the requirement under subsection (1), cause notice by post of the decision to grant a licence in relation to the felling or damage of standing native timber on leased land in the built-up area to be given—

- 5 (a) if a place adjoining the place to which the decision relates—
- (i) is occupied—to the lessee of each adjoining place at the address of the adjoining place; or
 - (ii) is unoccupied—to the lessee of the adjoining place at the address of the lessee last known to the Conservator; and
- (b) to each person who made an objection in accordance with section 61B.

10 “(4) A notice of the decision to grant a licence to fell or damage standing native timber on leased land in or outside the built-up area or to engage in a threatening process in relation to an ecological community shall, in addition to the requirement under subsection (2), specify the date of commencement of the licence.”.

Appointment saved

15 **19. (1)** In this section—

“commencement day” means the day on which the Principal Act is amended by this Act.

20 **(2)** Despite the amendment of the Principal Act by this Act, a person who held the office of Conservator immediately before the commencement day, holds that office on and after that day for the remainder of the person’s term of appointment, despite any change in qualifications for holding office effected by this Act, but subject to the Act in all other respects.

NOTES

Principal Act

1. Reprinted as at 30 November 1996. See also Acts Nos. 7 and 41, 1997

Penalty units

See section 33AA of the *Interpretation Act 1967*