

EXPOSURE DRAFT

Minister for Transport and City Services

(Prepared by Parliamentary Counsel's Office)

Urban Forest Bill 2022

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Minister for Transport and City Services

(Prepared by Parliamentary Counsel's Office)

Urban Forest Bill 2022

A Bill for

An Act for the protection of trees to support a sustainable urban forest, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Urban Forest Act 2022*.

2 Commencement

This Act commences on 1 July 2023.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 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 section 10 of that Act, 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)).

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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Part 2 Objects and important concepts

6 Objects of Act

The objects of this Act are—

- (a) to contribute towards having a tree canopy covering 30% of the Territory's existing and future urban areas by 2045; and
- (b) to support an urban forest that is resilient and sustainable in a changing climate; and
- (c) to protect and enhance the urban forest by protecting individual trees of significance or value and trees on public unleased land; and
- (d) to enhance and contribute to community wellbeing by encouraging community members to interact with the urban forest; and
- (e) to recognise that the urban forest has inherent value and should exist and flourish; and
- (f) to uphold the vitality of the urban forest ecosystem, including maintaining and enhancing biodiversity, habitat and resources for wildlife ; and
- (g) to promote the incorporation of the value of trees and their protection requirements into the design and planning of development, and during periods of construction activity; and
- (h) to promote a broad appreciation of the role of trees in the urban environment and the benefits of good tree management and sound arboricultural practices.

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7 **Meaning of *urban forest***

In this Act:

urban forest means the trees located on land in—

- (a) built-up urban areas; and
- (b) future urban areas; and
- (c) any area that is the subject of an estate development plan.

Note An area of land ceases to be in a future urban area if the [territory plan](#) is varied because of the approval of an estate development plan for the area (see [Planning and Development Act 2007](#), s 96).

8 **Meaning of *built-up urban area***

(1) In this Act:

built-up urban area—

- (a) means an area in any of the following zones identified in the [territory plan](#):
 - (i) residential zone (RZ);
 - (ii) commercial zone (CZ);
 - (iii) community facility zone (CFZ);
 - (iv) industrial zone (IZ);
 - (v) urban open space zone (PRZ1); and
- (b) includes an area that is a road verge in either of the following zones:
 - (i) a zone mentioned in paragraph (a);
 - (ii) a transport and service zone (TSZ); but

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(c) does not include the following areas:

- (i) nature reserves;
 - (ii) an area in the hills, ridges and buffer zone (NUZ3);
 - (iii) rural leases.
- (2) Despite the definition of *built-up urban area*, paragraph (c), the Minister may declare an area mentioned in paragraph (c) to be a built-up urban area.
- (3) A declaration is a notifiable instrument.
- (4) In this section:

nature reserve means an area of public land reserved in the [territory plan](#) for a nature reserve under the [Planning and Development Act 2007](#), section 315 (c).

road verge means the area between the trafficable part of a road and the boundary of a lease adjacent to the road.

rural lease—see the [Planning and Development Act 2007](#), section 234.

9 Meaning of *protected tree*

- (1) In this Act:

protected tree means—

- (a) each of the following trees located on land in built-up urban areas:
 - (i) a registered tree;
 - (ii) a regulated tree;
 - (iii) a tree on public unleased land (a *public tree*); and

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- (b) a registered tree or a remnant tree located on land in—
 - (i) a future urban area; or
 - (ii) an area that is the subject of an estate development plan.
- (2) In this section:

remnant tree means a native tree that is a remnant of, or has regenerated from, the original ecological community before the land where the tree is located was developed.

Note Remnant trees commonly include the following: *Eucalyptus blakelyi*; *Eucalyptus mannifera*; *Eucalyptus rossii*; *Eucalyptus macrorhyncha*; *Eucalyptus melliodora*; *Eucalyptus polyanthemos*; *Eucalyptus albens*; *Eucalyptus dives*; *Eucalyptus bridgesiana*.

10 **Meaning of *registered tree***

In this Act:

registered tree means a tree that is registered or provisionally registered under part 4 (Registration of trees).

11 **Meaning of *regulated tree***

- (1) In this Act:

regulated tree means—

- (a) a living tree on leased land that—
 - (i) is at least 8m high; or
 - (ii) has a canopy at least 8m wide; or
 - (iii) has 1 trunk that, 1.4m above natural ground level, has—
 - (A) a circumference of at least 1m; or
 - (B) a diameter of at least 318mm; or

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- (iv) has 2 or more trunks and, 1.4m above natural ground level, the average circumference of the trunks is at least 625mm, and—
 - (A) the sum of the circumferences of each trunk is at least 1m; or
 - (B) the sum of the diameters of each trunk is at least 318mm; or
- (v) regardless of the size of the tree—has been planted for not more than 5 years—
 - (A) under a canopy contribution agreement; or
 - (B) in accordance with a tree protection condition of a development approval; or
- (b) a dead native tree on leased land that, 1.4m above natural ground level, has a trunk with—
 - (i) a circumference of at least 1.88m; or
 - (ii) a diameter of at least 600mm.
- (2) However, a tree is not a regulated tree if it is—
 - (a) a pest plant under the *Pest Plants and Animals Act 2005*; or
 - (b) a registered tree.
- (3) In this section:
 - circumference** of a trunk—
 - (a) includes bark that is intact but does not include vines; and
 - (b) is measured using a measuring tape wrapped around the tree meeting at 2 points.

native plant—see the *Nature Conservation Act 2014*, section 14.

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native tree means a tree that is—

- (a) a native plant; and
- (b) at least 2m high.

12 **Meaning of *protection zone* for protected tree**

- (1) For this Act, the *protection zone* for a protected tree is—
 - (a) the area under the canopy of the tree; and
 - (b) the 2m wide area surrounding the vertical projection of the canopy; and
 - (c) the 4m wide area surrounding the trunk as measured at 1m above natural ground level.
- (2) However, if another protection zone is defined in a tree management plan in force for the protected tree, that protection zone is the *protection zone* for the tree.

13 **Meaning of *decision-maker***

In this Act:

decision-maker means—

- (a) for a decision or other function relating to a registered tree, a regulated tree or a remnant tree—the conservator; or
- (b) for a decision or other function relating to a public tree—the director-general.

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Part 3 Protection of trees

Division 3.1 Definitions

14 Meaning of *damage*

(1) In this Act:

damage a protected tree includes the following:

- (a) kill or destroy the tree;
- (b) poison the tree;
- (c) ringbark the tree (whether partially or completely);
- (d) fell or remove the tree;
- (e) remove, cut or break a branch of the tree;
- (f) major pruning of the tree;
- (g) remove a hollow from the tree;
- (h) anything else done to or in relation to the tree that—
 - (i) is likely to cause it to die; or
 - (ii) significantly reduces its life expectancy; or
 - (iii) significantly and adversely affects its health, stability or general appearance.

Examples

- 1 damage a protected tree's trunk or canopy by means of a machine
- 2 damage a protected tree's root system by cutting or ripping its roots or compacting the soil
- 3 poison a protected tree by attaching items, such as nails or wire, to the tree or graffitiing the tree

4 contaminate soil around a protected tree by spilling chemicals or washing down construction products, such as cement, around the tree

(2) However, *damage* does not include minor pruning of a regulated tree.

(3) In this section:

AS 4373 means AS 4373-2007 (Pruning of amenity trees), as in force from time to time.

Note AS 4373 may be purchased at www.standards.org.au.

hollow means a cavity in the trunk or branch of a tree.

major pruning, of a tree, means pruning done in accordance with AS 4373 or MIS 308 that changes the general appearance of the tree.

minor pruning, of a tree, means pruning done in accordance with AS 4373 or MIS 308 that—

- (a) only involves removing deadwood; or
- (b) does not involve removing any limbs that have a diameter greater than 100mm; or
- (c) does not adversely affect the general appearance of the tree; or
- (d) for the first pruning of the tree in the calendar year—affects less than 10% of the canopy and does not alter the overall shape of the canopy; or
- (e) for a fruit tree—is done for fruit production.

MIS 308 means MIS 308 (Tree pruning), National Minimum Industry Standards for tree pruning in Australia and New Zealand, published by Arboriculture Australia, March 2020.

Note MIS 308 may be purchased at www.arboriculture.org.au.

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15 Meaning of *prohibited groundwork*

In this Act:

prohibited groundwork—

- (a) in relation to the protection zone for a protected tree—a person does *prohibited groundwork* in the protection zone if the person—
 - (i) contaminates the soil in the protection zone with something that is poisonous to trees; or
 - (ii) cuts any of the tree's roots in the protection zone that have a diameter greater than 50mm; or
 - (iii) damages the tree's root system in the protection zone; or
 - (iv) engages in conduct that would compact the soil in at least 10% of the protection zone; or
 - (v) does either of the following in the protection zone, other than in cultivating the soil for horticultural purposes:
 - (A) excavates to a depth greater than 100mm over an area 4m² or larger;
 - (B) raises the soil level by more than 100mm above the natural ground level over an area 4m² or larger; or
 - (vi) does anything else prescribed by regulation for this paragraph; and

- (b) in relation to a declared site—a person does *prohibited groundwork* in the declared site if the person—
- (i) does either of the following in the declared site, other than in cultivating the soil for horticultural purposes:
 - (A) excavates to a depth greater than 100mm over an area 4m² or larger;
 - (B) raises the soil level by more than 100mm above the natural ground level over an area 4m² or larger; or
 - (ii) does anything else prescribed by regulation for this paragraph.

Examples—par (a) (iii)—damages protected tree’s root system

- 1 cuts or rips a protected tree’s root system, whether by machine or otherwise
- 2 reduces the permeable surface around a protected tree
- 3 compacts or contaminates the soil around a protected tree

Examples—par (a) (iv)—conduct that would compact soil

- 1 drive a vehicle over or park a vehicle on the soil in a protected tree’s protection zone
- 2 lay a concrete slab or pavers over a protected tree’s protection zone
- 3 store heavy materials in a protected tree’s protection zone
- 4 use a compaction machine on the soil in a protected tree’s protection zone
- 5 place a shipping container in a protected tree’s protection zone

Examples—par (a) (v) and (b) (i)—cultivation for horticultural purposes

- 1 preparing garden beds for planting
- 2 planting trees and shrubs

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Division 3.2 Prohibited activities

Subdivision 3.2.1 Prohibited activities—offences

16 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 intends to damage the protected tree.

Maximum penalty: 500 penalty units.

- (2) 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 engaging in the conduct would damage the protected tree.

Maximum penalty: 300 penalty units.

- (3) A person commits an offence if—
- (a) the person engages in conduct; and
 - (b) the person is reckless about whether engaging in the conduct would damage a protected tree.

Maximum penalty: 100 penalty units.

- (4) A person commits an offence if—
- (a) the person engages in conduct that damages a protected tree; and
 - (b) the person is negligent about whether engaging in the conduct would damage the protected tree.

Maximum penalty: 100 penalty units.

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

Maximum penalty: 50 penalty units.

- (6) For subsections (1), (2), (3) and (4), strict liability applies to the circumstance that the tree is a protected tree.

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

17 Doing prohibited groundwork

- (1) A person commits an offence if—

- (a) the person does prohibited groundwork in—

- (i) the protection zone for a protected tree; or
(ii) a declared site; and

- (b) the person intends to do the prohibited groundwork.

Maximum penalty: 300 penalty units.

- (2) A person commits an offence if—

- (a) the person does prohibited groundwork in—

- (i) the protection zone for a protected tree; or
(ii) a declared site; and

- (b) the person is reckless about whether the groundwork is prohibited groundwork in—

- (i) the protection zone for a protected tree; or
(ii) a declared site.

Maximum penalty: 200 penalty units.

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- (3) A person commits an offence if—
- (a) the person does prohibited groundwork in—
 - (i) the protection zone for a protected tree; or
 - (ii) a declared site; and
 - (b) the person is negligent about whether the groundwork is prohibited groundwork in—
 - (i) the protection zone for a protected tree; or
 - (ii) a declared site.

Maximum penalty: 100 penalty units.

- (4) A person commits an offence if the person does prohibited groundwork in—
- (a) the protection zone for a protected tree; or
 - (b) a declared site.

Maximum penalty: 50 penalty units.

- (5) For subsections (1), (2) and (3), strict liability applies to the circumstances that—
- (a) the tree is a protected tree; and
 - (b) the groundwork is done in—
 - (i) the protection zone for the tree; or
 - (ii) a declared site.

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

Subdivision 3.2.2 Prohibited activities—exceptions

18 Exceptions—tree damaging and prohibited groundwork offences

- (1) Sections 16 and 17 do not apply to the following:
 - (a) an activity carried out by an administrative unit authorised by the Minister under section 19;
 - (b) an activity approved under section 28 or section 32 that is done in accordance with the conditions (if any) of the approval (whether or not done by the applicant for the approval);
 - (c) anything done in accordance with—
 - (i) a tree management plan; or
 - (ii) a tree protection direction; or
 - (iii) a tree protection condition of a development approval; or
 - (iv) a direction under the *Plant Diseases Act 2002*, section 13 (Direction for seizure, disinfection, destruction etc of plants etc);
 - (d) anything done in relation to a protected tree under—
 - (i) a plant pruning direction under the *Public Unleased Land Act 2013*, section 31 (Direction to prune tree etc overhanging public unleased land); or
 - (ii) a plant removal direction under the *Public Unleased Land Act 2013*, section 34 (Direction to remove tree etc endangering public on public unleased land);

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- (e) anything done in relation to a protected tree under—
 - (i) any of the following provisions of the *Utilities Act 2000*:
 - (A) section 105 (Installation of network facilities);
 - (B) section 106 (Maintenance of network facilities);
 - (C) section 231 (Installation of territory network facilities);
 - (D) section 232 (Maintenance of territory network facilities); or
 - (ii) a territory network protection notice given under the *Utilities Act 2000*, section 249;
- (f) anything done in relation to a protected tree under any of the following provisions of the *Utilities (Technical Regulation) Act 2014* for protecting life or property if it is not practicable because of the urgency of the situation to obtain an approval under section 32:
 - (i) a network protection notice given under section 32;
 - (ii) section 41D (Clearance from aerial lines—vegetation);
 - (iii) section 41H (Maintenance of electrical infrastructure within network boundary—powers);
 - (iv) section 41I (Inspection of electrical infrastructure outside network boundary);
- (g) anything done in the exercise or purported exercise by a relevant person of a function under the *Emergencies Act 2004* for the purpose of—
 - (i) protecting life or property; or

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(ii) controlling, extinguishing or preventing the spread of a fire.

(2) In this section:

emergency controller—see the *Emergencies Act 2004*, dictionary.

relevant person means any of the following:

- (a) an emergency controller;
- (b) a member of the ambulance service;
- (c) a member of the fire and rescue service;
- (d) a member of the rural fire service;
- (e) a member of the SES;
- (f) any other person under the control of—
 - (i) an emergency controller; or
 - (ii) the chief officer (ambulance service); or
 - (iii) the chief officer (fire and rescue service); or
 - (iv) the chief officer (rural fire service); or
 - (v) the chief officer (SES);
- (g) a police officer.

19 Authorisation to carry out prohibited activities

- (1) The Minister may authorise an administrative unit to carry out an activity that would or may—
 - (a) damage a protected tree; or
 - (b) be prohibited groundwork in—
 - (i) the protection zone for a protected tree; or

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- (ii) a declared site.
- (2) The authorisation must state—
 - (a) the activity that the administrative unit may carry out; and
 - (b) any conditions of the authorisation.
- (3) An authorisation is a disallowable instrument.

Division 3.3 Approved activities

Subdivision 3.3.1 Approved activities—general

20 Criteria for approval of activities

- (1) The Minister may determine criteria (the *approval criteria*) for approving an activity that would or may—
 - (a) damage a protected tree; or
 - (b) be prohibited groundwork in—
 - (i) the protection zone for a protected tree; or
 - (ii) a declared site.
- (2) A determination is a disallowable instrument.

21 Application for approval of tree damaging etc activity

- (1) A person may apply, in writing, to the decision-maker in relation to a protected tree for approval to carry out an activity on leased land that would or may—
 - (a) damage the protected tree; or
 - (b) be prohibited groundwork in—
 - (i) the protection zone for a protected tree; or

- (ii) a declared site.

Note The decision-maker in relation to a protected tree that is a registered, regulated or remnant tree is the conservator. The decision-maker in relation to a protected tree that is a public tree is the director-general (see s 13).

- (2) The application must include—
- (a) if the protected tree is on the applicant's land—written evidence that the applicant is the lessee of the land; or
 - (b) if the protected tree is on leased land other than the applicant's land—written evidence, signed by the lessee of the land, that the lessee agrees to—
 - (i) the application being made; and
 - (ii) the activity to be carried out; or
 - (c) if the protected tree is on the common property in a units plan—written evidence, executed by the owners corporation for the units plan, that the owners corporation agrees to—
 - (i) the application being made; and
 - (ii) the activity to be carried out.

- (3) In this section:

applicant's land means the land for which the applicant is the lessee.

common property—see the *Unit Titles Act 2001*, section 13.

execute, a document by an owners corporation, means executed in a way mentioned in the *Unit Titles (Management) Act 2011*, section 9A.

owners corporation, for a units plan—see the *Unit Titles (Management) Act 2011*, dictionary.

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units plan—see the *Unit Titles Act 2001*, dictionary.

22 Approval application—more information

- (1) The decision-maker may, by written notice given to an applicant, require the applicant to give the decision-maker more information or a document that the decision-maker reasonably needs to decide the application, within the time stated in the notice.
- (2) If the applicant fails to comply with the requirement within the time stated in the notice, the decision-maker may refuse to consider the application further.

23 Approval application—assessment of tree

The decision-maker for the tree must, after receiving an application under section 21, assess the tree to which the application relates.

Examples—assessing tree

Assessing a tree may include assessing any of the following:

- the health, condition and structure of the tree;
- the ecological significance of the tree;
- the tree's location, including the tree's proximity to infrastructure, services and construction activity;
- whether the tree is a protected tree;
- whether the tree satisfies the approval criteria.

24 Approval application—advisory panel advice

The decision-maker may ask the advisory panel for advice on an application under section 21.

25 Approval application—referral to other entities

- (1) The decision-maker must, after assessing a tree to which an application under section 21 relates, give a copy of the application to the following:
 - (a) if the application relates to a tree that forms part of a place with heritage significance—the heritage council;
 - (b) if the application relates to a tree that is an Aboriginal cultural tree—each representative Aboriginal organisation.
- (2) However, the decision-maker is not required to give a copy of the application to an entity mentioned in subsection (1) if the decision-maker is satisfied—
 - (a) that—
 - (i) the applicant has adequately consulted the entity about the application not earlier than 6 months before the day the application is made; and
 - (ii) the entity agrees in writing to the activity proposed in the application; or
 - (b) if the entity is the heritage council—that the activity proposed in the application is included in a development application given to the council under the *Planning and Development Act 2007*, section 148.
- (3) A written agreement to an activity mentioned in subsection (2) (a) (ii) is taken to be advice on the application received in accordance with section 26.

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26 Approval application—time for referral entity to give advice

If an application is referred to an entity under section 25, the entity must give the decision-maker the entity's advice on the application not later than—

- (a) 10 working days after the day the decision-maker gives the application to the entity; or
- (b) if a regulation prescribes a shorter period—the end of the shorter period.

Note A written agreement to an activity proposed in the application is taken to be advice given in accordance with this section in relation to an application (see s 25 (3)).

27 Approval application—effect of no response by referral entity

If an entity does not give advice in accordance with section 26 on an application referred to the entity, the entity is taken to have given advice that the entity supports the application.

28 Approval application—decision

- (1) Within 30 working days after the day the decision-maker receives an application under section 21, the decision-maker must decide whether to approve the activity to which it relates.
- (2) In working out the 30-working day period, any period when a requirement under section 22 (1) was not complied with is disregarded.

- (3) However, the decision-maker may, by written notice given to the applicant, extend the period for deciding an application for a stated period if, while the decision-maker is considering the application—
- (a) the tree to which the application relates is damaged; and
 - (b) the decision-maker is reasonably satisfied that additional time is needed to investigate the circumstances that led to the tree's damage.

Note The period for deciding an application may also be extended or suspended in extraordinary circumstances (see s 139).

- (4) In making a decision on the application, the decision-maker must have regard to the following:
- (a) the approval criteria;
 - (b) the advice (if any) of the advisory panel;
 - (c) the advice (if any) of an entity to which the application was referred under section 25;
 - (d) anything else the decision-maker considers relevant.
- (5) An approval may be given subject to conditions stated in the approval.
- (6) This section is subject to section 35 (Decision on approval application—canopy contribution agreements).

Note Under s 35, if the decision-maker approves the removal of a protected tree under this section, the applicant must enter into a canopy contribution agreement with the decision-maker in relation to the tree's removal.

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29 Approval application—notice of decision

- (1) If the decision-maker decides to approve an activity for which an application in relation to a declared site was made under section 21, the decision-maker must give written notice of the decision to the following:
 - (a) the applicant;
 - (b) the lessee of, or custodian for, the land where the site is located;
 - (c) the planning and land authority.
- (2) If the decision-maker decides to approve any other application made under section 21, the decision-maker must give written notice of the decision to the following:
 - (a) the applicant;
 - (b) the lessee of, or custodian for, the land where the tree is located;
 - (c) the lessee of, or custodian for, the land where the activity is to be carried out;
 - (d) the occupier of land that—
 - (i) adjoins the land where the tree is located; and
 - (ii) is within 50m of the tree;
 - (e) if the application relates to a tree that has heritage significance—the heritage council;
 - (f) if the application relates to an Aboriginal cultural tree—each representative Aboriginal organisation.
- (3) However, the decision-maker need not give more than 1 notice to a particular person.

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- (4) The decision-maker may give written notice of the decision to anyone else the decision-maker considers appropriate.

30 Operation of approval

- (1) Subject to section 135 (Applications for reconsideration), an approval takes effect on the date stated in the notice of decision.
- (2) The date stated in the notice must be at least 14 working days after the day the notice is given to the applicant.
- (3) Unless cancelled sooner, the approval remains in force for the period stated in the approval.
- (4) The decision-maker may, in writing, extend the approval for a stated period if satisfied that the activity still satisfies the approval criteria.
- (5) The approval may be extended under subsection (4) even if it has already ended.

31 Cancellation of approval

- (1) The decision-maker may cancel an approval if satisfied that the approved activity does not satisfy, or no longer satisfies, the approval criteria.
- (2) For an approval in relation to a declared site, the decision-maker must give notice of the cancellation to the following:
 - (a) the applicant;
 - (b) the lessee of, or custodian for, the land where the site is located;
 - (c) the planning and land authority.
- (3) For any other approval, the decision-maker must give notice of the cancellation to the following:
 - (a) the applicant;

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- (b) the lessee of, or custodian for, the land where the tree is located;
- (c) the lessee of, or custodian for, the land where the activity was approved to be carried out;
- (d) the occupier of land that—
 - (i) adjoins the land where the tree is located; and
 - (ii) is within 50m of the tree.
- (4) However, the decision-maker need not give more than 1 notice to a particular person.
- (5) Notice may be given orally or in writing.
- (6) However, if notice is given orally, the decision-maker must give written notice as soon as practicable after the oral notice is given.
- (7) For subsections (2) (a) and (3) (a), it is sufficient if the decision-maker sends the notice to the applicant at the address last given to the decision-maker by the applicant.
- (8) The decision-maker may give notice of the cancellation to anyone else the decision-maker considers appropriate.
- (9) Subject to section 135 (Applications for reconsideration), the cancellation takes effect on the date stated in the written notice of cancellation.
- (10) The date stated in the written notice must be at least 14 working days after the day the notice is given to the applicant.

32 Approval in urgent circumstances or for minor works

- (1) A person may apply to the decision-maker for a protected tree for approval for an activity that would or may—
 - (a) damage the protected tree; or

- (b) be prohibited groundwork in—
 - (i) the protection zone for the protected tree; or
 - (ii) a declared site.

Note The decision-maker in relation to a protected tree that is a registered, regulated or remnant tree is the conservator. The decision-maker in relation to a protected tree that is a public tree is the director-general (see s 13).

- (2) The application may be made orally or in writing.
- (3) However, if the application is made orally, the applicant must make a written application as soon as practicable after the oral application is made.
- (4) The decision-maker may approve the activity if satisfied that—
 - (a) the circumstances require the application to be considered urgently; and
 - (b) the activity is necessary to protect the health or safety of people or animals, or public or private property.
- (5) The decision-maker may also approve an activity that is, or may be, major pruning or prohibited groundwork in the protection zone for a protected tree if the decision-maker is satisfied the activity will have little or no adverse impact on the health or stability of the tree.
- (6) The approval may be given orally or in writing but the decision-maker must make a written record of any oral approval as soon as practicable after giving it.
- (7) The approval may be given subject to conditions stated in the approval.
- (8) Unless cancelled sooner, the approval has effect for the period stated in the approval.

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(9) In this section:

major pruning—see section 14 (3).

33 Offence—contravene condition of approval

(1) A person commits an offence if the person contravenes a condition of an approval given to the person under section 28 or section 32.

Maximum penalty: 50 penalty units.

(2) An offence against this section is a strict liability offence.

Subdivision 3.3.2 Approved activities—canopy contributions

34 Definitions—sdiv 3.3.2

In this subdivision—

canopy contribution means an action taken under a canopy contribution agreement to counterbalance the loss of canopy coverage as a result of the removal of a protected tree from the urban forest.

financial settlement, in relation to a canopy contribution agreement—see section 36 (2) (b).

on-site canopy contribution, in relation to a canopy contribution agreement—see section 36 (2) (a).

35 Decision on approval application—canopy contribution agreements

- (1) This section applies in relation to an application under section 21 (1) (a) for approval to remove a protected tree.
- (2) If the decision-maker in relation to the protected tree approves the removal of the protected tree under section 28, the applicant must enter into an agreement with the decision-maker (a *canopy contribution agreement*) in relation to the tree's removal.

Note The decision-maker in relation to a protected tree that is a registered, regulated or remnant tree is the conservator. The decision-maker in relation to a protected tree that is a public tree is the director-general (see s 13).

36 Canopy contribution agreements—conditions

- (1) This section applies if the decision-maker in relation to a protected tree enters into a canopy contribution agreement with an applicant under section 35 (2).
- (2) The canopy contribution agreement must state that it is subject to either or both of the following conditions, as decided by the decision-maker:
 - (a) the applicant must make a contribution (an *on-site canopy contribution*) to the tree canopy on the land where the protected tree is located;
 - (b) the applicant must pay an amount (a *financial settlement*) to the Territory.
- (3) If the canopy contribution agreement is subject to a condition that the applicant make an on-site canopy contribution—
 - (a) the agreement must state how many trees are to be planted on the land; and

- (b) the on-site canopy contribution must comply with any requirements prescribed by regulation.
- (4) If the canopy contribution agreement is subject to a condition that the applicant pay a financial settlement—
 - (a) the agreement must state the amount of the financial settlement to be paid; and
 - (b) the decision-maker must take into account any matter prescribed by regulation in deciding the amount.
- (5) A regulation may prescribe how to work out—
 - (a) the number of trees, and the size of the trees, to be planted on land for an on-site canopy contribution; and
 - (b) the amount to be paid for a financial settlement.

37 Canopy contribution agreements—amendment

- (1) A person who enters into a canopy contribution agreement with the decision-maker in relation to a protected tree may, not later than 15 working days after the day the agreement is entered into, apply to the decision-maker to amend a condition of the agreement to change—
 - (a) the number of trees the person must plant on the person's land; or
 - (b) the amount of financial settlement payable by the person under the agreement.
- (2) The decision-maker must, not later than 15 working days after the day the decision-maker receives an application for amendment—
 - (a) decide whether to amend the condition; and
 - (b) tell the person about the decision; and

- (c) if the decision is not to amend the condition—give reasons for the decision.

Note The period for deciding an application may also be extended or suspended in extraordinary circumstances (see s 139).

38 Canopy contribution agreements—payment management plans

- (1) If a person enters into a canopy contribution agreement that is subject to a condition that the person pay a financial settlement, the person may apply, in writing, to the decision-maker to enter into an arrangement (a *payment management plan*) to pay the financial settlement by instalments.
- (2) On application under subsection (1), the decision-maker must—
- (a) approve the application; or
 - (b) refuse the application.
- (3) The decision-maker must, within a reasonable period, give the applicant written notice of—
- (a) a decision under subsection (2); and
 - (b) for a decision under subsection (2) (a)—the period of the payment management plan and the amount of each instalment; and
 - (c) for a decision under subsection (2) (b)—the reasons for the decision.
- (4) A regulation may prescribe—
- (a) the information that must be included in the application; and
 - (b) matters the decision-maker must take into account when considering the application.

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39 Canopy contribution agreements—exemption

- (1) An applicant under section 21 may apply to the decision-maker for an exemption from the requirement to enter into a canopy contribution agreement.
- (2) However, an applicant must not apply for an exemption if the application under section 21 relates to a development application.
- (3) In deciding whether to exempt the applicant from the requirement, the decision-maker must consider—
 - (a) whether the applicant is disadvantaged by any social or financial hardship; and
 - (b) if the tree to which the application relates is planted in a group of trees—whether removal of the tree would benefit the health of the other trees in the group; and
 - (c) whether the circumstances of the application require the tree to be removed urgently to protect the health or safety of people or animals, or public or private property; and
 - (d) whether an administrative unit has approved the removal of a public tree at the applicant’s cost; and
 - (e) whether the tree to which the application relates is dead; and
 - (f) whether the tree to which the application relates is subject to advice given to the conservator by the heritage council or a representative Aboriginal organisation under the [Heritage Act 2004](#), part 10A (Tree damaging activity etc); and
 - (g) any matters prescribed by regulation.

40 Canopy contribution agreements—use of financial settlement amounts

An amount paid under a financial settlement must be used for 1 or more of the following purposes:

- (a) tree planting;
- (b) tree care and maintenance;
- (c) removal of trees for new plantings;
- (d) engaging or educating the community about protecting trees;
- (e) supporting the urban forests ecosystem.

Examples—par (e)

- undertaking plantings and developing programs to support biodiversity
- controlling erosion through nature corridor planting
- removing pest plants

41 Canopy contribution agreements—annual reporting

A report prepared by the director-general under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) the total amount paid under financial settlements for the year; and
- (b) the total amount used for a purpose mentioned in section 40 for the year; and
- (c) the total number of trees agreed to be planted under any on-site canopy contributions for the year; and
- (d) the total number of trees approved for removal under canopy contribution agreements for the year; and
- (e) any other information prescribed by regulation.

42 Offence—contravene canopy contribution agreement

A person commits an offence if the person engages in conduct that contravenes, or is likely to contravene, a canopy contribution agreement.

Maximum penalty: 100 penalty units.

Division 3.4 Directions

Subdivision 3.4.1 Tree protection directions

43 Criteria for tree protection directions

- (1) The conservator may determine criteria for the giving of tree protection directions.
- (2) A determination is a notifiable instrument.

44 Tree protection directions

- (1) A decision-maker in relation to a protected tree may give a direction (a *tree protection direction*) to do or not do something to protect the protected tree to—
 - (a) the lessee or occupier of the land where the tree is located; or
 - (b) anyone carrying out an activity that may affect the tree.

Example

to erect a fence around a tree

Note The decision-maker in relation to a protected tree that is a registered, regulated or remnant tree is the conservator. The decision-maker in relation to a protected tree that is a public tree is the director-general (see s 13).

- (2) A tree protection direction must be given in accordance with any criteria determined under section 43.

- (3) A tree protection direction may be given orally or in writing.
- (4) However, if the direction is given orally, the decision-maker must give the direction in writing as soon as practicable after the oral direction is given.
- (5) The written direction must state the period for which it is in force.
- (6) In this section:

protected tree includes a tree that has been nominated for registration under section 54, if the conservator has not—

- (a) decided whether to provisionally register the tree under section 55; or
- (b) refused to consider the nomination under section 54.

45 Tree protection directions—service

- (1) A written tree protection direction may be given to the lessee or occupier of the land where a protected tree is located by leaving it, secured conspicuously, on or at the land.
- (2) A written tree protection direction may be given to anyone carrying out an activity that may affect a protected tree by leaving it, secured conspicuously, at the place where the activity is being carried out.

46 Offence—contravene tree protection direction

A person commits an offence if the person intentionally, recklessly or negligently contravenes a tree protection direction.

Maximum penalty: 50 penalty units.

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47 Contravention of tree protection direction—action by authorised person

- (1) This section applies if a person does not comply with a tree protection direction requiring the person to do something in relation to a protected tree.
- (2) An authorised person, or anyone else authorised by the decision-maker for the protected tree for this section, may enter the land where the tree is located and—
 - (a) do the thing stated in the direction; or
 - (b) do or finish any work stated in the direction.

Note The decision-maker in relation to a protected tree that is a registered, regulated or remnant tree is the conservator. The decision-maker in relation to a protected tree that is a public tree is the director-general (see s 13).

- (3) The reasonable cost incurred by the Territory in doing anything under subsection (2) is a debt owing to the Territory by the person to whom the direction was given.
- (4) The decision-maker must give written notice of the action proposed under subsection (2) at least 1 working day before the day the action is to begin to—
 - (a) the person given the tree protection direction; and
 - (b) the lessee or occupier of the land where the tree is located.
- (5) The decision-maker may give written notice of the proposed action to anyone else the decision-maker considers appropriate.
- (6) The notice must include the following:
 - (a) a statement about the operation of this section;
 - (b) the purpose and nature of the proposed action;

- (c) the time or times when the action is proposed to be taken;
 - (d) a statement about the obligations of the authorised person and the Territory under subsection (8).
- (7) A person may waive the right to all or part of the minimum period of notice under subsection (4).
- (8) Section 131 (Damage etc to be minimised) and section 132 (Compensation for exercise of enforcement powers) apply to any action taken under subsection (2) as if—
- (a) it were the exercise of a function under part 7 (Enforcement) by an authorised person or a person assisting an authorised person; and
 - (b) any changes prescribed by regulation, and all other necessary changes, were made.

Subdivision 3.4.2 Tree reparation directions

48 Tree reparation directions

- (1) This section applies if—
- (a) a person causes damage to a protected tree; and
 - (b) the damage is not authorised under an approval under this Act or another territory law.

Examples—approvals that may authorise damage

- 1 an approval given to the person under s 28 or s 32
- 2 a tree management plan
- 3 a tree protection direction
- 4 a tree protection condition of a development approval
- 5 a direction under the *Plant Diseases Act 2002*, s 13
- 6 a public unleased land permit

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- (2) The authorised person may direct (a *tree reparation direction*) the person to—
 - (a) repair the damage; or
 - (b) if the tree is beyond repair—remove or replace the tree.
- (3) A tree reparation direction must—
 - (a) be in writing; and
 - (b) identify the protected tree to which the direction relates; and
 - (c) describe the damage to the tree; and
 - (d) state the thing required to be done; and
 - (e) state the period for compliance with the direction.

49 Offence—fail to comply with tree reparation direction

- (1) A person commits an offence if—
 - (a) an authorised person gives the person a tree reparation direction; and
 - (b) the person fails to comply with the direction.

Maximum penalty: 50 penalty units.

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

50 Repair of damage etc by Territory

- (1) This section applies if—
 - (a) an authorised person gives a person a tree reparation direction; and
 - (b) the person fails to comply with the direction.

- (2) The director-general may—
- (a) do the thing required to be done; and
 - (b) recover the reasonable costs of doing the thing from the person.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

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Part 4 Registration of trees

Division 4.1 Preliminary

51 Definitions—pt 4

In this part:

cancellation criteria—see section 52 (1) (b).

registration criteria—see section 52 (1) (a).

restricted information means information restricted under section 74 (Restricted information—Aboriginal cultural trees).

site declaration—see section 69 (2).

52 Criteria for registration and cancellation of registration

- (1) The Minister may 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.

Division 4.2 Tree register

53 Tree register

- (1) The conservator must keep a register of trees (the *tree register*).
- (2) The tree register must include the following:
 - (a) for each provisionally registered tree—
 - (i) everything required to be entered in the register under section 57 (2); and
 - (ii) the tree management plan (if any) for the tree;
 - (b) for each registered tree—
 - (i) everything required to be entered in the register under section 62 (2); and
 - (ii) the tree management plan (if any) for the tree;
 - (c) for each declared site—
 - (i) a description of the area that is the declared site; and
 - (ii) the date the site declaration was made;
 - (d) the following information about any activity in relation to a provisionally registered or registered tree, or a declared site, for which an approval under division 3.3 (Approved activities) is in force:
 - (i) the approved activity;
 - (ii) any conditions to which the approval is subject;
 - (iii) the period of the approval;
 - (e) any changes to the information in the register that are necessary to keep the register up-to-date.

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- (3) The tree register may also include any other information the conservator considers relevant.
- (4) The conservator may correct a mistake or omission in the tree register subject to any requirement prescribed by regulation.
- (5) If anything required to be entered in the tree register in relation to a tree is restricted information, the conservator must include a statement in the register to that effect.
- (6) In this section:
registered tree does not include a provisionally registered tree.

Division 4.3 Registration

54 Nomination for registration

- (1) Anyone (including the conservator) may nominate a tree for registration.
- (2) A nomination must be—
 - (a) in writing; and
 - (b) given to the conservator.
- (3) The conservator may refuse to consider a nomination if satisfied the nomination is frivolous or vexatious.

55 Provisional registration—decision

- (1) Within 6 months after the day the conservator receives a nomination for a tree, the conservator must decide whether to provisionally register the tree.

Note Under s 57, the conservator is required to provisionally register Aboriginal cultural trees.

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- (2) The conservator may, by written notice given to the nominator, require the nominator to give the conservator more information or a document that the conservator reasonably needs to decide whether to provisionally register the tree.
- (3) If the nominator fails to comply with a requirement under subsection (2), the conservator may refuse to consider the nomination further.
- (4) If the conservator requires a nominator to give more information, the conservator may, by written notice given to the nominator, extend the 6-month period mentioned in subsection (1) by a stated period.
- (5) The conservator may provisionally register a tree only if the conservator is satisfied the tree satisfies the registration criteria.

56 Provisional registration—notice of decision

- (1) The conservator must give written notice of a decision under section 55 to—
 - (a) the person who nominated the tree for registration; and
 - (b) if the conservator decides to provisionally register the tree—
 - (i) the lessee of, or custodian for, the land that includes all or part of the protection zone for the tree; and
 - (ii) if the conservator considers the tree may have 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 decision to anyone else the conservator considers appropriate.
- (4) The conservator must also give public notice of a decision.

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- (5) A notice under this section must include—
 - (a) enough information to enable the tree to be identified; and
 - (b) a statement to the effect that any comments on the proposed registration of the tree may be given to the conservator on or before the closing date stated in the notice.
- (6) The closing date must be at least 21 working days after the day public notice is given under subsection (4).
- (7) A notice under this section must not include restricted information.

57 Provisional registration

- (1) This section applies to a tree if—
 - (a) it is an Aboriginal cultural tree; or
 - (b) for a tree other than an Aboriginal cultural tree—the conservator decides to provisionally register the tree.
- (2) The conservator must provisionally register the tree by entering the following information in the tree register:
 - (a) enough information to enable the tree to be identified;
 - Note* Information about the location or nature of an Aboriginal cultural tree is restricted information unless the conservator declares in writing that it is not (see s 74).
 - (b) if practicable, the tree’s botanical name and any relevant horticultural information;
 - (c) a description of the protection zone for the tree;
 - (d) an indication that the registration is provisional;
 - (e) the period of the provisional registration.

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58 Provisional registration—period

- (1) The provisional registration of a tree is for 1 year beginning on the day it is provisionally registered.
- (2) However, the provisional registration ends if, within the year—
 - (a) the tree is registered; or
 - (b) the conservator decides not to register the tree and either—
 - (i) the appeal period for the decision has ended and no appeal has been made; or
 - (ii) any appeal has been finally decided and is unsuccessful.
- (3) The conservator may provisionally register a tree more than once.
- (4) For subsection (3), another nomination under section 54 is not needed.

59 Consultation on proposed registration

- (1) After making a decision under section 55, the conservator must ask the advisory panel for advice on the proposed registration of the tree.
- (2) If the conservator considers the tree may have heritage significance, the conservator must also ask the heritage council for advice on the proposed registration.
- (3) If the tree is an Aboriginal cultural tree—
 - (a) the heritage council must consult with each representative Aboriginal organisation before giving the conservator advice on the proposed registration; and
 - (b) the conservator must consider the views of each representative Aboriginal organisation before deciding whether to register the tree.

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60 Registration—decision

- (1) Within 1 year after the day the tree is provisionally registered, the conservator must decide whether to register the tree.
- (2) The conservator may, by written notice given to the person who nominated the tree for registration, require the nominator to give the conservator more information or a document that the conservator reasonably needs to decide whether to register the tree.
- (3) If the nominator fails to comply with a requirement under subsection (2), the conservator may refuse to consider further whether to register the tree.
- (4) If the conservator requires a nominator to give more information, the conservator may, by written notice given to the nominator, extend the 1-year period mentioned in subsection (1) by a stated period.
- (5) In deciding whether to register the tree, the conservator must have regard to—
 - (a) any advice on the proposed registration given to the conservator by the advisory panel or the heritage council; and
 - (b) any comments received on the proposed registration on or before the closing date stated in the notice under section 56; and
 - (c) if the tree is an Aboriginal cultural tree—the views of each representative Aboriginal organisation.
- (6) The conservator may register the tree only if the conservator is satisfied the tree satisfies the registration criteria.

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61 Registration—notice of decision

- (1) The conservator must give written notice of a decision under section 60 to the following:
 - (a) the person who nominated the tree for registration;
 - (b) the lessee of, or custodian for, the land where the tree is located;
 - (c) if the tree is on leased land—the occupier of, or custodian for, land that—
 - (i) adjoins the land where the tree is located; and
 - (ii) is within 50m of the tree;
 - (d) anyone who gave the conservator—
 - (i) written comments about the proposed registration; and
 - (ii) contact details for notification of the conservator’s decision;
 - (e) if the heritage council gave advice on the proposed registration—the heritage council;
 - (f) if the tree is an Aboriginal cultural tree—each representative Aboriginal organisation consulted;
 - (g) the registrar-general.
- (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 register the tree, the conservator must also give public notice of the decision.
- (5) A notice under this section must not include restricted information.

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62 Registration

- (1) This section applies if—
 - (a) the conservator decides to register a tree; and
 - (b) either—
 - (i) the appeal period for the decision has ended and no appeal has been made; or
 - (ii) any appeal has been finally decided and is unsuccessful.
- (2) The conservator must register the tree by entering the following information in the tree register:
 - (a) a photograph or other image of the tree;
 - (b) the tree's location;
 - (c) the tree's botanical name and any relevant horticultural information;
 - (d) a description of the protection zone for the tree;
 - (e) a statement about the tree's significance.

Division 4.4 Cancellation of registration— generally

63 Proposal for cancellation of registration

- (1) Anyone (including the conservator) may propose that a tree's registration be cancelled.
- (2) A proposal must be—
 - (a) in writing; and
 - (b) given to the conservator.

- (3) The conservator may refuse to consider a proposal if satisfied the proposal is frivolous or vexatious.

64 Notice of proposed cancellation of registration

- (1) Before considering a proposal to cancel a tree's registration, the conservator must give written notice of the proposed cancellation to the following:
- (a) the person who proposed the cancellation;
 - (b) the lessee of, or custodian for, the land where the tree is located;
 - (c) if the tree is on leased land—the occupier of land that—
 - (i) adjoins the land where the tree is located; and
 - (ii) is within 50m of the tree;
 - (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 give public notice of the proposed cancellation.
- (5) A notice under this section must include—
- (a) an indication of whether the conservator is satisfied that the proposed cancellation is likely to satisfy the cancellation criteria; and
 - (b) if the conservator considers there may be grounds for making a site declaration in relation to the cancellation—an indication of that fact; and

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- (c) a statement to the effect that any comments about the proposed cancellation may be given to the conservator by the closing date stated in the notice.
- (6) The closing date must be at least 21 working days after the day public notice is given under subsection (4).
- (7) A notice under this section must not include restricted information.

65 Consultation on proposed cancellation of registration

- (1) After giving notice under section 64, the conservator must ask the advisory panel for advice on the proposed cancellation and any proposed site declaration.
- (2) If the tree register indicates that the tree has heritage significance, the conservator must also ask the heritage council for advice on the proposed cancellation.
- (3) If the tree is an Aboriginal cultural tree, the heritage council must consult, and consider the views of, each representative Aboriginal organisation before giving the conservator advice on the proposed cancellation.

66 Cancellation of registration etc—decision

- (1) Within 6 months after the day the conservator publishes the notice mentioned in section 64 (4), the conservator must decide whether to cancel the registration of the tree.
- (2) In deciding whether to cancel the registration of the tree (and whether to make a site declaration in relation to the cancellation), the conservator must have regard to—
 - (a) any advice on the proposed cancellation or site declaration given to the conservator by the advisory panel or the heritage council; and

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- (b) any comments received on the proposed cancellation or site declaration on or before the closing date stated in the notice under section 64.
- (3) The conservator may cancel the registration of the tree only if the conservator is satisfied the cancellation satisfies the cancellation criteria.

67 Cancellation of registration—notice of decision

- (1) The conservator must give written notice of a decision under section 66 to the following:
 - (a) the person who proposed the cancellation;
 - (b) the lessee of, or custodian for, the land where the tree is located;
 - (c) if the tree is on leased land—the occupier of land that—
 - (i) adjoins the land where the tree is located; and
 - (ii) is within 50m of the tree;
 - (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;
 - (e) if the heritage council gave advice on the proposed cancellation—the heritage council;
 - (f) if the tree is an Aboriginal cultural tree—each representative Aboriginal organisation consulted.
- (2) However, the conservator need not give more than 1 notice to a particular person.

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- (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 give public notice of the decision.
- (5) A notice under this section must not include restricted information.

68 Cancellation of registration

- (1) This section applies if—
 - (a) the conservator decides to cancel the registration of a tree; and
 - (b) either—
 - (i) the appeal period for the decision has ended and no appeal has been made; or
 - (ii) any appeal has been finally decided and is unsuccessful.
- (2) The conservator must cancel the registration of the tree by removing the entry about the tree from the tree register.
- (3) However, if the conservator makes a site declaration in relation to the tree, the entry about the tree must remain in the register while the site declaration is in force but must include a statement that the registration of the tree has been cancelled.

69 Site declarations

- (1) This section applies if—
 - (a) a registered tree is damaged by conduct other than conduct mentioned in section 18 (1); and

- (b) if the registration of the tree is cancelled after the damage happens—the conservator is satisfied on reasonable grounds that the cancellation is reasonably attributable to the damage caused by the conduct.
- (2) The conservator may declare the following areas to be a declared site (a *site declaration*):
 - (a) if the tree is registered—the protection zone for the tree;
 - (b) if the tree’s registration is cancelled—the area that was the protection zone for the tree immediately before the registration was cancelled.
- (3) A site declaration is a notifiable instrument.
- (4) Also, the conservator—
 - (a) must give written notice of the site declaration to—
 - (i) the lessee of the land where the tree is located; and
 - (ii) the planning and land authority; and
 - (b) may give written notice of the site declaration to anyone else the conservator considers appropriate.
- (5) A site declaration has effect for—
 - (a) at least 5 years; or
 - (b) if a longer period is stated in the declaration—the longer period.

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Division 4.5 Cancellation of registration—natural death of tree

70 Cancellation of registration of dead tree

- (1) If the conservator is satisfied on reasonable grounds that a registered tree has died of natural causes, the conservator may cancel the registration of the tree.
- (2) Division 4.4 does not apply to the cancellation.

71 Cancellation of registration of dead tree—notice

- (1) The conservator must give written notice of a decision under section 70 to the following:
 - (a) the lessee of, or custodian for, the land where the tree is located;
 - (b) if the tree is on leased land—the occupier of land that—
 - (i) adjoins the land where the tree is located; and
 - (ii) is within 50m of the tree.
- (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) The conservator must also give public notice of the decision.
- (5) A notice under this section must not include restricted information.

72 Cancellation of registration of dead tree—tree register

If the conservator cancels the registration of a tree under section 70, the conservator must remove the entry about the tree from the tree register.

Division 4.6 Restricted information

73 Meaning of *tree*—div 4.6

In this division:

tree means—

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

74 Restricted information—Aboriginal cultural trees

- (1) Information about the location or nature of an Aboriginal cultural 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 take reasonable steps to give a copy of the declaration to the following:
 - (a) the person who nominated the tree for registration;
 - (b) the lessee or occupier of, or custodian for, the land where the tree is located;
 - (c) the heritage council;
 - (d) each representative Aboriginal organisation.

75 Offence—publish restricted information without approval

- (1) A person commits an offence if the person—
 - (a) publishes restricted information about an Aboriginal cultural tree; and

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(b) knows that the information is restricted information.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the publication is in accordance with an approval under section 76; or
 - (b) the publication is for the exercise of a function under this Act or another territory law; or
 - (c) the publication is by an Aboriginal person to another Aboriginal person.

76 Approval to publish restricted information

- (1) A person may apply, in writing, to the conservator for approval to publish restricted information about an Aboriginal cultural tree.
- (2) An application must—
 - (a) identify the restricted information proposed to be published; and
 - (b) state the reason for the publication; and
 - (c) state the nature of the publication, including the audience to whom it would be directed.
- (3) The conservator may, by written notice given to the applicant, approve the publication of restricted information about the tree if satisfied that the publication will not have a substantial adverse effect on the values for which the tree is or may be registered.
- (4) The conservator must consult and consider the views of each representative Aboriginal organisation about the information before approving its publication.

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77 Limited access to restricted information—land for sale

- (1) This section applies if—
 - (a) land is offered for sale; and
 - (b) an Aboriginal cultural tree is located on the land; and
 - (c) there is restricted information about the tree; and
 - (d) an interested person for the land applies to the conservator for access to any restricted information about the tree that relates to the conservation and use of the land.
- (2) The conservator may give the applicant—
 - (a) the restricted information sought; and
 - (b) a written explanation about the operation of this part.
- (3) The conservator must consult and consider the views of each representative Aboriginal organisation about the information before giving the applicant the information.
- (4) In this section:

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

 - (a) someone considering buying an interest in the land;
 - (b) the person who nominated the tree for registration;
 - (c) the lessee of, or custodian for, the land where the tree is located;
 - (d) if the tree has or may have heritage significance—the heritage council;
 - (e) each representative Aboriginal organisation.

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Part 5 Management of trees

Division 5.1 Tree management plans

78 Tree management plans—proposal or application

- (1) The conservator may, on the conservator's own initiative, propose a plan (a *tree management plan*) for a registered tree that may—
 - (a) provide for activities that may be carried out in relation to the tree; and
 - (b) include conditions about how the activities are to be carried out.

Note Anything done in relation to a protected tree in accordance with a tree management plan for the tree is an exception to the offences under sdiv 3.2.1 (Prohibited activities—offences) (see s 18 (1) (c) (i)).
- (2) The following may apply, in writing, to the conservator for a tree management plan:
 - (a) for a registered tree on public unleased land—the custodian for the land where the tree is located;
 - (b) for a protected tree on leased land—
 - (i) the lessee of the land where the tree is located; or
 - (ii) anyone else.
- (3) For subsection (2) (b) (ii), the application must include written evidence from the lessee of the land where the tree is located that the lessee is aware of the application.

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- (4) The conservator may refuse to consider an application if satisfied that an adequate tree management plan is already in force for the tree.

Note If the planning and land authority approves a development application that relates to a regulated tree, the authority may also approve a tree management plan for the tree under the *Planning and Development Act 2007*, s 162 (6).

79 Tree management plans—more information for application

- (1) The conservator may, by written notice given to the applicant, require the applicant to give the conservator more information or a document that the conservator reasonably needs to decide the application.
- (2) If the applicant fails to comply with a requirement under subsection (1), the conservator may refuse to consider the application further.

80 Tree management plans—assessment of tree

If the conservator proposes, or receives an application for, a tree management plan, the conservator must assess the tree to which the proposal or application relates.

Examples—assessing tree

Assessing a tree may include assessing any of the following:

- the health, condition and structure of the tree;
- the ecological significance of the tree;
- the tree's location, including the tree's proximity to infrastructure, services and construction activity;
- whether the tree is a protected tree;
- whether the tree satisfies the approval criteria.

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81 Tree management plans—advisory panel advice on proposal or application

The conservator may ask the advisory panel for advice on the proposal or application.

82 Tree management plans—referral of proposal or application to other entities

- (1) This section applies if the conservator—
 - (a) assesses a tree to which a proposal or application for approval of a tree management plan relates; and
 - (b) is satisfied that the tree requires a tree management plan.
- (2) The conservator must give a copy of the proposal or application to the following:
 - (a) if the proposal or application relates to a tree that forms part of a place with heritage significance—the heritage council;
 - (b) if the proposal or application relates to a tree that is an Aboriginal cultural tree—each representative Aboriginal organisation.
- (3) However, the conservator is not required to give a copy of the application to an entity mentioned in subsection (2) if the conservator is satisfied—
 - (a) that—
 - (i) the applicant has adequately consulted the entity about the application not earlier than 6 months before the day the application is made; and
 - (ii) the entity agrees in writing to the activity proposed in the application; or

- (b) if the entity is the heritage council—that the activity proposed in the application is included in a development application given to the council under the *Planning and Development Act 2007*, section 148.
- (4) A written agreement to an activity mentioned in subsection (3) (a) (ii) is taken to be advice on the application received in accordance with section 83.

83 Tree management plans—time for referral entity to give advice

If a proposal or application is referred to an entity under section 82, the entity must give the conservator the entity's advice on the proposal or application not later than—

- (a) 10 working days after the day the conservator gives the proposal or application to the entity; or
- (b) if a regulation prescribes a shorter period—the end of the shorter period.

84 Tree management plans—effect of no response by referral entity

If an entity does not give advice in accordance with section 83 on a proposal or application referred to the entity, the entity is taken to have given advice that the entity supports the proposal or application.

85 Tree management plans—decision

- (1) If the conservator proposes, or receives an application for, a tree management plan, the conservator must decide whether to approve the plan.

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- (2) For an application for a tree management plan, the conservator must make the decision within 30 working days after the day the conservator receives the application.
- (3) In working out the 30-working day period, any period when a requirement under section 79 (1) was not complied with is disregarded.

Note The period for deciding an application may also be extended or suspended in extraordinary circumstances (see s 139).

- (4) In making the decision, the conservator must have regard to the following:
 - (a) the guidelines determined under section 88;
 - (b) the advice (if any) of the advisory panel;
 - (c) the advice (if any) of an entity to which the application was referred under section 82;
 - (d) anything else the conservator considers relevant.
- (5) A tree management plan may be approved subject to a condition.

Example—condition

a tree management plan must include landscape treatments, such as understory planting, mulching and irrigation, to protect and nurture a tree

- (6) If the conservator approves a tree management plan for a registered tree, the conservator must include details of the plan in the tree register.

86 Tree management plans—notice of decision

- (1) The conservator must give written notice of the decision on a tree management plan to the applicant (if any).
- (2) If the decision is to approve the tree management plan, the conservator must also give written notice of the decision to the following:
 - (a) the lessee of, or custodian for, the land where the tree is located;
 - (b) if the tree is on leased land—the occupier of land that—
 - (i) adjoins the land where the tree is located; and
 - (ii) is within 50m of the tree;
 - (c) if the plan is for a tree that the conservator considers may have heritage significance—the heritage council;
 - (d) if the plan is for an Aboriginal cultural tree—each representative Aboriginal organisation.
- (3) However, the conservator need not give more than 1 notice to a particular person.
- (4) The conservator may give written notice of the decision to anyone else the conservator considers appropriate.

87 Tree management plans—operation

Subject to section 135 (Applications for reconsideration), a tree management plan takes effect on the date the conservator approves the tree management plan.

88 Tree management plans—guidelines

- (1) The conservator may make guidelines for tree management plans.
- (2) The guidelines may set out things that may or must be included in a tree management plan.

Note The guidelines may apply, adopt or incorporate an instrument as in force from time to time (see s 143).

- (3) A guideline is a notifiable instrument.

89 Tree management plans—doing groundwork in protection zone

- (1) An entity providing a utility service must provide a tree management plan to the conservator before starting any groundwork in—
 - (a) the protection zone for a protected tree; or
 - (b) a declared site.

- (2) In this section:

utility service—see the *Utilities Act 2000*, dictionary.

90 Offence—contravene tree management plan

- (1) A person commits an offence if the person engages in conduct that contravenes, or is likely to contravene, a tree management plan.

Maximum penalty: 50 penalty units.

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

Division 5.2 Tree bonds

91 Definitions—div 5.2

In this division:

public unleased land permit—see the *Public Unleased Land Act 2013*, section 40.

tree bond agreement—see section 92 (2).

92 Tree bonds and tree bond agreements

- (1) This section applies if—
- (a) any of the following have been proposed or applied for, or are in force:
 - (i) a tree management plan;
 - (ii) a public unleased land permit;
 - (iii) a tree protection condition of a development approval; and
 - (b) a decision-maker is satisfied on reasonable grounds that a protected tree is at risk of damage because of an activity to be carried out for the plan, permit or development mentioned in paragraph (a).

Examples—activities that may be carried out

demolition, excavation, construction

Note The decision-maker in relation to a protected tree that is a registered, regulated or remnant tree is the conservator. The decision-maker in relation to a protected tree that is a public tree is the director-general (see s 13).

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- (2) The decision-maker may require the applicant for the plan, permit or development mentioned in subsection (1) (a) to enter into an agreement (a *tree bond agreement*) with the Territory to—
- (a) protect the protected tree from damage while carrying out any activity for the plan, permit or development; and
 - (b) pay the Territory a bond (a *tree bond*) as security for the performance of the obligation to protect the protected tree.
- (3) The decision-maker may, by written notice given to the applicant, require the applicant to give the decision-maker any of the following documents before the agreement is entered into:
- (a) a report stating the condition of the tree;
 - (b) if the agreement relates to a tree management plan or a tree protection condition of a development approval—a statement setting out—
 - (i) how the applicant proposes to protect the tree from damage (the *protection measures*); and
Examples—protection measures
fencing, signage
 - (ii) how the protection measures are in accordance with any government policy relating to tree protection.
Example—government policy relating to tree protection
tree management plan guidelines
 - (c) any other document prescribed by regulation.
- (4) The applicant must not carry out any activity for a plan, permit or development mentioned in subsection (1) (a) before entering into a tree bond agreement.

93 Tree bond agreements—form and period

- (1) A tree bond agreement must—
 - (a) be in writing; and
 - (b) be signed by both parties to the agreement; and
 - (c) state the amount of tree bond for the agreement.
- (2) A tree bond agreement has effect—
 - (a) on the date it is signed; and
 - (b) for the period decided by the decision-maker and stated in the agreement, unless ended earlier in accordance with section 96.
- (3) For subsection (2) (b), the end of the period must not be more than 3 years after the day any activity carried out under a plan or permit mentioned in section 92 (1) (a) is completed.
- (4) A tree bond agreement may be amended in writing by the parties, including by extending the period of the agreement.

94 Tree bond agreements—guidelines

- (1) The Minister may make guidelines for tree bond agreements.
- (2) The guidelines may set out—
 - (a) documents that must be given to the decision-maker before entering into a tree bond agreement; and
 - (b) the rights and responsibilities of parties to a tree bond agreement; and
 - (c) any other requirement for a tree bond agreement.

Note The guidelines may apply, adopt or incorporate an instrument as in force from time to time (see s 143).

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- (3) A guideline is a notifiable instrument.

95 Tree bonds—amount

- (1) The amount of a tree bond is—
- (a) for a registered tree—the greatest of the following:
 - (i) \$3 000;
 - (ii) 3 times the value of the tree;
 - (iii) if a regulation prescribes another amount—the prescribed amount; or
 - (b) for any other tree—the amount decided by the decision-maker.
- (2) For subsection (1) (b), the amount must be—
- (a) at least—
 - (i) \$3 000; or
 - (ii) if the value of the tree is more than \$3 000—the value of the tree; or
 - (iii) if a regulation prescribes another amount—the prescribed amount; but
 - (b) not more than 3 times the value of the tree.
- (3) In determining the amount of a tree bond, the decision-maker must take into account—
- (a) the value of the tree; and
 - (b) for a young tree—the cost of replacing the tree; and
 - (c) whether—
 - (i) the applicant has a history of damaging protected trees; and

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- (ii) the decision-maker has previously refused to refund the amount of a tree bond to the applicant.
- (4) A regulation may prescribe how to work out the value of a tree.

96 Tree bonds—release

- (1) The amount of a tree bond paid by a person under a tree bond agreement must be refunded to the person as soon as practicable after the tree bond agreement ends if—
 - (a) an authorised person has inspected the tree; and
 - (b) the decision-maker is satisfied on reasonable grounds that—
 - (i) the tree is in good health; and
 - (ii) there is no sign of damage to the tree; and
 - (iii) the person has not engaged in conduct that contravenes the tree bond agreement.
- (2) The tree bond agreement may end earlier than the date stated in the agreement if—
 - (a) the parties agree to the agreement ending at an earlier date (the *earlier end date*); and
 - (b) an authorised person has inspected the tree and verified that—
 - (i) the tree is in good health; and
 - (ii) there is no sign of any damage to the tree; and
 - (iii) the person has not engaged in conduct that contravenes the tree bond agreement.
- (3) However, the earlier end date must be at least 6 months after the day any activity carried out under a plan or permit mentioned in section 92 (1) (a) is completed.

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97 Tree bonds—refusal to release

- (1) This section applies if—
 - (a) a tree bond agreement has ended; and
 - (b) an authorised person has inspected the tree; and
 - (c) the decision-maker is satisfied on reasonable grounds that—
 - (i) the tree—
 - (A) is not in good health; or
 - (B) has been damaged; and
 - (ii) the tree's ill health or damage was likely caused by a failure of the person to comply with the tree bond agreement; or
 - (iii) the person under the tree bond agreement has engaged in conduct that contravenes the tree bond agreement.
- (2) The decision-maker may do either or both of the following:
 - (a) ask the person to do something to restore the tree;
 - (b) refuse to refund the amount of the tree bond to the person.
- (3) If the decision-maker asks the person to do something to restore the tree and the person fails to satisfactorily do the thing, the decision-maker may refuse to refund all or part of the total amount of the tree bond to the person.

Division 5.3 Tree advisory panel

98 Advisory panel—establishment

The Tree Advisory Panel is established.

99 Advisory panel—appointment of members

- (1) The Minister must appoint the members of the advisory panel.

Note 1 For laws about appointments, see the [Legislation Act](#), pt 19.3.

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).

- (2) Each member must be appointed for—
- (a) at least 1 year; but
 - (b) not longer than 4 years.
- (3) A panel member's conditions of appointment are the conditions stated in the appointment, subject to any determination under the [Remuneration Tribunal Act 1995](#).

100 Advisory panel—membership

- (1) The tree advisory panel must have at least 3 members.
- (2) The Minister must ensure that—
- (a) each member of the advisory panel has extensive knowledge of and experience in 1 or more of the following fields:
 - (i) arboriculture;
 - (ii) forestry;
 - (iii) horticulture; and

- (b) at least 1 member has extensive knowledge of and experience in arboriculture or forestry; and
- (c) the members between them include people with extensive knowledge of and experience in at least 2 fields mentioned in subsection (2) (a).

101 Advisory panel—functions

The advisory panel has the following functions:

- (a) to give any advice requested by the conservator, including advice on the following:
 - (i) an application for approval of an activity under division 3.3;
 - (ii) an application for approval of a tree management plan under division 5.1;
 - (iii) the proposed registration of a tree;
 - (iv) the proposed cancellation of registration of a tree;
 - (v) a request for reconsideration of a decision under section 136;
- (b) to give other advice to the conservator on anything relevant to the conservator's functions in relation to tree protection.

102 Advisory panel—ending appointments

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

- (a) misbehaviour; or
- (b) physical or mental incapacity; or
- (c) contravening section 103.

103 Advisory panel—disclosure of members interests

- (1) If a member of the advisory panel has a material interest in an issue in relation to which the advisory panel has been asked to advise the conservator, the member or advisory panel must disclose the nature of the interest to the conservator as soon as practicable after the member or the advisory panel becomes aware of the relevant facts.
- (2) The member must not advise, or further advise, the conservator in relation to the issue, unless the conservator directs otherwise.
- (3) Within 14 working days after the end of each financial year, the conservator must give the Minister a statement of any disclosure of interest made under this section, and any direction given by the conservator, during the financial year.
- (4) In this section:

material interest—an advisory panel member has a *material interest* in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the advisory panel's functions in relation to advising the conservator about the issue.

104 Advisory panel—procedures

A regulation may prescribe procedures of the advisory panel, including how decisions are made by the panel.

Examples—what a regulation may prescribe

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

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105 Advisory panel—delegation

The advisory panel may delegate any of its functions to a member of the advisory panel in accordance with any requirement prescribed by regulation.

Note For laws about delegations, see the [Legislation Act](#), pt 19.4.

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Part 6 Development applications— conservator’s advice

106 Meaning of *development*—pt 6

In this part:

development means a proposed development to which an application for development approval under the *Planning and Development Act 2007*, chapter 7 applies.

107 Simplified outline—pt 6

The following notes provide a simplified outline of this part and the *Planning and Development Act 2007*, chapter 7 (Development approvals).

Note 1 Conservator to be given copy of development application

The planning and land authority may be required to give the conservator a copy of each development application for a development proposal in the merit or impact track (see *Planning and Development Act 2007*, s 148). This requirement does not apply to a development application for a development proposal in the code track (see *Planning and Development Act 2007*, s 117 (c)).

Note 2 Conservator to give advice on application

The conservator gives advice to the planning and land authority in relation to the development and tree protection (see s 108 and s 109) (see also *Planning and Development Act 2007*, s 149 to s 151A).

Note 3 Conservator’s advice to be considered

The conservator’s advice is to be considered by the planning and land authority (or the Minister) in approving or refusing to approve a development application (see *Planning and Development Act 2007*, s 120 (f) and s 129 (f)).

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Note 4 Development approvals

A development approval that is inconsistent with the conservator's advice in relation to a registered tree or declared site must not be given (see *Planning and Development Act 2007*, s 119 (1) (c) and (3) and s 128 (1) (b) (iii) and (5)).

However, for a development proposal in the merit track that is related to light rail, the conservator's advice in relation to a registered tree or declared site need not be followed in certain circumstances (see *Planning and Development Act 2007*, s 119A).

A development approval that is inconsistent with the conservator's advice in relation to a regulated tree may be given only in the circumstances set out in the *Planning and Development Act 2007*, s 119 (2), s 119A (2) and s 128 (4).

108 Land subject to development—conservator may give advice about tree protection

- (1) This section applies if the conservator is satisfied on reasonable grounds that a development involves, or is likely to involve, an activity that would or may—
 - (a) damage a protected tree; or
 - (b) be prohibited groundwork in—
 - (i) the protection zone for a protected tree; or
 - (ii) a declared site.
- (2) The conservator may give the planning and land authority written advice in relation to the development in accordance with section 109.

Note If the planning and land authority refers a development application to the conservator under the *Planning and Development Act 2007*, s 148, the conservator must, not later than 15 working days after being given the application, give the planning and land authority advice in relation to the development application (see *Planning and Development Act 2007*, s 149).

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(3) In this section:

protected tree, in relation to a development, means a protected tree—

- (a) on the land subject to the development; or
- (b) on land adjoining the land subject to the development.

109 Conservator’s advice about tree protection

- (1) This section applies if the conservator gives advice—
 - (a) under section 108 in relation to a development; or
 - (b) under the *Planning and Development Act 2007*, section 149 in relation to a development application.
- (2) The advice must include advice about tree protection requirements for each protected tree with a protection zone on, or partly on, the land subject to the development.
- (3) Without limiting subsection (2), the advice may—
 - (a) include information about the trees on the land; and
 - (b) set out the changes (if any) the conservator considers should be made to any tree management plan or proposed tree management plan that relates to the development application, having regard to—
 - (i) the guidelines approved under section 88 (Tree management plans—guidelines); and
 - (ii) the advice (if any) of the advisory panel; and
 - (iii) anything else the conservator considers relevant.

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110 Offence—contravene tree protection condition of development approval

- (1) This section applies if—
- (a) the conservator gives advice under section 108 in relation to a development; and
 - (b) the development has development approval; and
 - (c) the approval is subject to a condition (a *tree protection condition*) requiring a person to do or not do something in relation to—
 - (i) a protected tree; or
 - (ii) the protection zone for a protected tree; or
 - (iii) a declared site.

Example—par (c)—tree protection condition

a condition that the applicant comply with tree protection requirements of a tree management plan

- (2) A person commits an offence if the person contravenes a tree protection condition of the development approval.

Maximum penalty: 50 penalty units.

- (3) However, subsection (2) does not apply to a person (the *first person*) if the person responsible for the development fails to take reasonable steps to tell the first person about the tree protection condition.
- (4) A person commits an offence if the person—
- (a) is responsible for the development; and

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- (b) fails to take reasonable steps to tell each person carrying out work on the development site about the tree protection condition.

Maximum penalty: 50 penalty units.

- (5) A person commits an offence if—
 - (a) the person engages in conduct that contravenes a tree protection condition of the development approval; and
 - (b) the person engages in the conduct in doing work as part of a business involved in—
 - (i) property development or maintenance; or
 - (ii) any other activity in relation to land that may affect trees on the land.

Maximum penalty: 50 penalty units.

Examples—par (b) (ii)—activities

tree surgery, building, plumbing, landscaping, installing irrigation, concreting, earthwork, horticulture

- (6) An offence against subsection (4) or (5) is a strict liability offence.

- (7) In this section:

responsible—a person is **responsible** for a development if the person was the applicant for development approval under the *Planning and Development Act 2007*, chapter 7.

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Part 7 Enforcement

Division 7.1 General

111 Definitions—pt 7

In this part:

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

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

occupier, of premises, includes—

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

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

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

warrant means a warrant issued under division 7.4 (Search warrants).

Division 7.2 Authorised people

112 Appointment of authorised people

The director-general may appoint a public servant as an authorised person for this Act.

Note For laws about appointments, see the [Legislation Act](#), pt 19.3.

113 Identity cards

- (1) The director-general must give each authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if the person—
 - (a) stops being an authorised person; and
 - (b) does not return the person's identity card to the director-general as soon as practicable (but within 7 days) after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (4) Subsection (3) does not apply to a person if the person's identity card is—
 - (a) lost or stolen; or

(b) destroyed by someone else.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

(5) An offence against this section is a strict liability offence.

114 Authorised person must show identity card on exercising power

- (1) If an authorised person exercises a power under this Act that affects an individual, the authorised person must first show the authorised person's identity card to the individual.
- (2) If an authorised person exercises a power under this Act that affects a person, other than an individual, the authorised person must first show the authorised person's identity card to an individual the authorised person believes on reasonable grounds is an employee, officer or agent of the person.

Examples—person other than an individual

corporation, partnership

Division 7.3 Powers of authorised people

115 Power to enter premises

- (1) For this Act, an authorised person may—
 - (a) at any reasonable time, enter premises to—
 - (i) inspect a tree, or the area near a tree, that is registered or proposed to be registered; or
 - (ii) give a tree protection direction to the lessee or occupier of the premises; or

- (b) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (c) at any time, enter premises with the occupier's consent; or
 - (d) enter premises in accordance with a warrant.
- (2) However, subsection (1) (a) or (b) does not authorise entry into a part of premises that is being used only for residential purposes.
 - (3) An authorised person may, without the occupier's consent, enter land around the premises to ask for consent to enter the premises.
 - (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
 - (5) An authorised person who enters premises under this section may inspect the premises or anything on it.

116 Production of identity card

An authorised person and any other person (other than a police officer) accompanying the authorised person must not remain at premises entered under this part if the authorised person does not produce their identity card when asked by the occupier.

117 Consent to entry

- (1) This section applies if the authorised person intends to ask the occupier of premises to consent to the authorised person entering the premises.
- (2) Before asking for consent, the authorised person must—
 - (a) produce their identity card; and

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- (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (3) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (4) If the occupier signs an acknowledgment of consent, the authorised person must, as soon as practicable, give a copy to the occupier.
- (5) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
 - (a) a question arises, in a proceeding in the court, whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent for the entry is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

118 General powers on entry to premises

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
- (a) inspect or examine anything;
 - (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) make sketches, drawings or any other kind of record (including photographs, films, audio, video or other recordings);
 - (e) require the occupier, or anyone else at the premises, to give the authorised person reasonable help to exercise a power under this part.

Note The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 20 penalty units.

119 Power to seize things

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—
- (a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an authorised person may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it.
- Note* If an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized (see s 127).
- (5) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
 - (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 20 penalty units.

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

120 Direction to give personal details

- (1) This section applies if an authorised person believes on reasonable grounds that a person—
- (a) has committed, is committing or is about to commit an offence against this Act; or
 - (b) may be able to assist in the investigation of an offence against this Act.

- (2) The authorised person may direct the person to give the authorised person, immediately, any of the following details:
- (a) the person's full name;
 - (b) the person's home address;
 - (c) the person's date of birth.

Note 1 The authorised person must first show the person the authorised person's identity card (see s 114).

Note 2 It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

- (3) If the authorised person believes on reasonable grounds that a personal detail given by a person in response to a direction under subsection (2) is false or misleading, the authorised person may direct the person to produce evidence immediately of the correctness of the detail.
- (4) If an authorised person gives a direction to a person, the authorised person must tell the person that it is an offence if the person fails to comply with the direction.
- (5) If an authorised person gives a direction to a person, the authorised person must give the direction in a language, or in a way of communication, that the authorised person believes on reasonable grounds the person is likely to understand.

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121 Offence—fail to comply with direction to give personal details

- (1) A person commits an offence if the person fails to comply with a direction under section 120.

Maximum penalty: 5 penalty units.

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

Division 7.4 Search warrants

122 Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.

- (2) The application must—

(a) be sworn; and

(b) state the grounds on which the warrant is sought.

- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity connected with an offence against this Act; and

(b) the thing or activity—

(i) is, or is being engaged in, at the premises; or

(ii) may be, or may be engaged in, at the premises within the next 14 days.

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- (5) The warrant must state the following:
- (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part;
 - (b) the offence for which the warrant is issued;
 - (c) the things that may be seized under the warrant;
 - (d) the hours when the premises may be entered;
 - (e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

123 Warrants—application other than in person

- (1) An authorised person may apply for a warrant by phone, radio, email, letter or other form of communication if the authorised person considers it necessary because of—
- (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately give a written copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to give a written copy to the authorised person—
- (a) the magistrate must tell the authorised person—
 - (i) the terms of the warrant; and

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- (ii) the date and time the warrant was issued; and
- (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant’s terms.
- (6) The written copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person’s powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents mentioned in subsection (7), the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
 - (a) a question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

124 Search warrants—announcement before entry

- (1) An authorised person must, before anyone enters premises under a search warrant—
 - (a) announce that the authorised person is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify themselves to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone (including the authorised person or any person assisting the authorised person); or
 - (b) that the effective execution of the warrant is not frustrated.

125 Details of search warrant to be given to occupier 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 authorised person or a person assisting must make available to the person—
 - (a) a copy of the warrant or warrant form; and
 - (b) a document setting out the rights and obligations of the person.
- (2) In this section:
warrant form—see section 123 (5) (b).

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126 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 7.5 Return and forfeiture of things seized

127 Receipt for things seized

- (1) As soon as practicable after an authorised person seizes a thing 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 119 (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.

128 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
- (a) both of the following apply:
- (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
- (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

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- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier’s representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

129 Access to things seized

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

- (a) inspect the thing; and
- (b) photograph the thing; and
- (c) if the thing is a document—take extracts from, or make copies of, the thing.

130 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if—
 - (a) an infringement notice for an offence connected with the thing is not served on the owner within 1 year after the day of the seizure and—
 - (i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or

- (ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or
 - (b) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
 - (i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or
 - (ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or
 - (c) an infringement notice for an offence connected with the thing is served on the owner and not withdrawn within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—
 - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that section; or
 - (ii) the Magistrates Court does not find the offence proved.
- (2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
- (a) is forfeited to the Territory; and
 - (b) may be sold, destroyed or otherwise disposed of as the director-general directs.

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Division 7.6 Miscellaneous

131 **Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

132 **Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by—
 - (a) an authorised person; or
 - (b) a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.

- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

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Part 8 Notification and review of decisions

133 Definitions—pt 8

In this part:

internally reviewable decision means a decision mentioned in schedule 1, part 1.1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

internal review notice—see the [ACT Civil and Administrative Tribunal Act 2008](#), section 67B (1).

reviewable decision means a decision mentioned in schedule 1, part 1.2, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

134 Internal review notices

If the a decision-maker makes an internally reviewable decision, the decision-maker must give an internal review notice to each entity mentioned in schedule 1, part 1.1, column 4 in relation to the decision.

Note 1 The decision-maker must also take reasonable steps to give an internal review notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67B).

Note 2 The decision-maker in relation to a protected tree that is a registered, regulated or remnant tree is the conservator. The decision-maker in relation to a protected tree that is a public tree is the director-general (see s 13).

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135 Applications for reconsideration

- (1) An entity mentioned in schedule 1, part 1.1, column 4 in relation to an internally reviewable decision may apply to the decision-maker for reconsideration of the decision.
- (2) The application must be made within 14 working days after the day the entity is given the internal review notice.
- (3) The application must—
 - (a) be in writing; and
 - (b) set out the grounds on which reconsideration of the decision is sought.
- (4) If the application is made in accordance with this section, the making of the application automatically stays the operation of the decision until the application is finally dealt with.

136 Reconsideration of decisions

- (1) As soon as practicable after receiving an application for reconsideration of a decision (the *first decision*), the decision-maker must—
 - (a) if the decision-maker is the conservator—
 - (i) for an advisable decision—ask the advisory panel, in writing, for advice on the application; or
 - (ii) for any other decision—
 - (A) ask the advisory panel, in writing, for advice on the application; or
 - (B) review the first decision; or
 - (b) if the decision-maker is the director-general—review the decision.

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- (2) If the conservator asks the advisory panel for advice, the advisory panel must give the conservator its advice within 30 working days after the day the advisory panel receives the conservator's request.
- (3) Within 30 working days after the relevant day, the decision-maker must—
 - (a) reconsider the first decision; and
 - (b) confirm, vary or set aside the first decision.
- (4) For subsection (3) (a), if the conservator receives advice from the advisory panel, the conservator must have regard to the advice when reconsidering the first decision.
- (5) In this section:

advisable decision means a decision mentioned in schedule 1, part 1.1, column 3, items 1, 2 and 9.

relevant day means—

- (a) if the conservator asks the advisory panel for advice—the day the conservator receives the advisory panel's advice; or
- (b) in any other case—the day the decision-maker receives the application for reconsideration.

137 Reviewable decision notices

If a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice only to each entity mentioned in schedule 1, part 1.2, column 4 in relation to the decision.

Note The decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

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138 Applications for review

An entity mentioned in schedule 1, part 1.2, column 4 in relation to a reviewable decision may apply to the ACAT for review of the decision.

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Part 9 Miscellaneous

139 Declaration in extraordinary circumstances

- (1) This section applies if the Minister believes on reasonable grounds that the effective administration of this Act is, or may be, affected by extraordinary circumstances.

Examples—extraordinary circumstances

bushfire, pandemic, severe storm

- (2) The Minister may declare that—
- (a) a provision of this Act—
 - (i) applies to a stated entity or a stated activity; or
 - (ii) does not apply to a stated entity or a stated activity; or
 - (b) a time period mentioned in this Act by which an entity must or may do something is extended or suspended for a stated period.
- (3) A declaration is a disallowable instrument.

140 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and

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(d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the commission of the relevant offence, a court must have regard to the following:
- (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
 - (i) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
 - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (b) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (4) Subsection (3) does not limit the matters the court may consider.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](#), s 58).

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(6) In this section:

executive officer, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

relevant offence means an offence against any of the following:

- (a) section 16 (1), (2), (3) or (4) (Damaging protected trees);
- (b) section 17 (1), (2) or (3) (Doing prohibited groundwork).

141 Power to exclude entities or activities from Act

- (1) The Minister may declare that this Act, or a provision of this Act, does not apply to a stated entity or a stated activity.
- (2) A declaration is a disallowable instrument.

142 Delegation of decision-maker's functions

- (1) The decision-maker in relation to a protected tree may delegate the decision-maker's functions under this Act to—
 - (a) a public employee; or
 - (b) an authorised person; or
 - (c) a person prescribed by regulation.

Note 1 The decision-maker in relation to a protected tree that is a registered, regulated or remnant tree is the conservator. The decision-maker in relation to a protected tree that is a public tree is the director-general (see s 13).

Note 2 For laws about delegations, see the [Legislation Act](#), pt 19.4.

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- (2) However, the decision-maker must not delegate the function of—
- (a) deciding whether to register a tree under section 60; or
 - (b) deciding whether to cancel the registration of a tree under section 66; or
 - (c) reconsidering a decision under section 136.

143 Incorporation of documents

A statutory instrument under this Act may apply, adopt or incorporate an instrument as in force from time to time.

Note The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

144 Notification of certain incorporated documents

- (1) This section applies to an incorporated document, or an amendment or replacement of an incorporated document.

Example—replacement document

a new edition of the incorporated document

- (2) The director-general may prepare a notice (an *incorporated document notice*) for the incorporated document, amendment or replacement that contains the following information:
- (a) for an incorporated document—details of the document, including its title, author and date of publication;
 - (b) for a replacement of an incorporated document—details of the replacement, including its title, author and date of publication;
 - (c) for an amendment of an incorporated document—the date of publication of the amendment (or of the document as amended) and a brief summary of the effect of the amendment;

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- (d) for an incorporated document or any amendment or replacement—
 - (i) a date of effect (no earlier than the day after the day of notification of the notice); and
 - (ii) how to access the document, amendment or replacement.
- (3) The director-general must ensure that the document, amendment or replacement is made publicly available.

Example—publicly available

published on the directorate’s website

- (4) An incorporated document notice is a notifiable instrument.
- (5) An incorporated document, and any amendment or replacement of an incorporated document, has no effect under this Act unless—
 - (a) an incorporated document notice is notified in relation to the document, amendment or replacement; or
 - (b) the document, amendment or replacement is notified under the [Legislation Act](#), section 47 (6).
- (6) The [Legislation Act](#), section 47 (7) does not apply in relation to incorporated documents.
- (7) In this section:

amendment, of an incorporated document, includes an amendment of a replacement for the incorporated document.

incorporated document means an instrument applied, adopted or incorporated by a statutory instrument under this Act.

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replacement, for an incorporated document, means—

- (a) a document that replaces the incorporated document; or
- (b) a document (an *initial replacement*) that replaces a document mentioned in paragraph (a); or
- (c) a document (a *further replacement*) that replaces an initial replacement or any further replacement.

145 Determination of fees

- (1) The Minister may determine fees for this Act.
- (2) A determination is a disallowable instrument.

146 Regulation-making power

- (1) The Executive may make regulations for this Act.
- (2) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

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Part 10 Repeals

147 Legislation repealed

- (1) The following legislation is repealed:
 - *Tree Protection Act 2005* (A2005-51)
 - *Magistrates Court (Tree Protection Infringement Notices) Regulation 2006* (SL2006-6).
- (2) All other legislative instruments under the *Tree Protection Act 2005* are repealed.

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Part 20 Transitional

300 Definitions—pt 20

In this part:

commencement day means the day this Act, section 3 commences.

repealed Act means the *Tree Protection Act 2005*.

301 Registered trees

A tree that is registered (or provisionally registered) under the repealed Act, part 7 (Registration of trees) immediately before the commencement day is taken to be registered under this Act, part 4.

302 Approval application for tree damaging etc activity

An application under the repealed Act, section 22 (Application for approval of tree damaging etc activity) made, but not finally dealt with, before the commencement day is taken to be an application under this Act, section 21.

304 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.

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- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

Note A transitional provision under s (1) continues to have effect after its repeal, however, a modification under s (2) has no ongoing effect after its repeal (see [Legislation Act](#), s 88).

305 Expiry—pt 20

This part expires 2 years after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Schedule 1 Reviewable decisions

(see pt 8)

Part 1.1 Internally reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity
1	28	approve, or refuse to approve, activity	applicant for approval, lessee of land, heritage council, representative Aboriginal organisation
2	31	cancel approval of activity	person who held approval, lessee of land
3	36 (2)	make canopy contribution agreement subject to a condition	applicant for approval, lessee of land
4	36 (2) (a)	on-site canopy contribution decided by decision-maker	applicant for approval, lessee of land
5	36 (2) (b)	amount of financial settlement decided by decision-maker	applicant for approval, lessee of land
6	37 (2)	refuse to amend canopy contribution agreement condition	applicant for approval, lessee of land
7	38 (2) (b)	refuse to allow application for payment management plan	applicant for payment plan
8	39 (1)	refuse to exempt applicant from canopy contribution agreement	applicant for exemption, lessee of land
9	85 (1)	approve, or refuse to approve, tree management plan	applicant for approval, lessee of land, heritage council, representative Aboriginal organisation

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column 1 item	column 2 section	column 3 decision	column 4 entity
10	93 (2) (b)	period of tree bond agreement	party to tree bond agreement
11	95	amount of tree bond decided by decision-maker	party to tree bond agreement
12	97	refuse to pay back tree bond, in full or part	party to tree bond agreement

Part 1.2 Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity
1	44	give tree protection direction	<ul style="list-style-type: none">• person given direction• lessee or occupier of land to which direction relates
2	55	approve, or refuse to approve, provisional registration of tree	person given written notice, under s 56 (1), of registration decision
3	60	approve, or refuse to approve, registration of tree	person given written notice, under s 61 (1) (a), (b), (c), (e), (f) or (g) of registration decision
4	66	cancel, or refuse to cancel, registration of tree	person given written notice, under s 67 (1) (a), (b), (c), (e) or (f), of decision to cancel, or refuse to cancel, registration
5	69	make site declaration	lessee of land to which site declaration relates

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column 1 item	column 2 section	column 3 decision	column 4 entity
6	76	approve, or refuse to approve, publication of restricted information	<ul style="list-style-type: none">• applicant for approval• representative Aboriginal organisation
7	136	confirm, vary or set aside first decision	entity who is given internal review notice for decision mentioned in sch 1, pt 1.1, in relation to decision to be reviewed

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Dictionary

(see s 3)

Note The [Legislation Act](#) contains definitions relevant to this Act.
For example:

- ACAT
- administrative unit
- appoint
- AS (see s 164 (1))
- calendar year
- chief officer (ambulance service)
- chief officer (fire and rescue service)
- chief officer (rural fire service)
- chief officer (SES)
- conservator of flora and fauna
- contravene
- corporation
- director-general (see s 163)
- document
- entity
- exercise
- function
- heritage council
- home address
- individual
- planning and land authority
- public employee
- public notice
- public servant
- reviewable decision notice
- territory land

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- territory plan
- the Territory
- writing.

Aboriginal cultural tree—a tree is an ***Aboriginal cultural tree*** if it is of cultural 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.

Examples

scarred trees, modified trees

Aboriginal person means a person who—

- (a) is a descendant of an Aboriginal person; and
- (b) identifies as an Aboriginal person; and
- (c) is accepted as an Aboriginal person by an Aboriginal community.

advisory panel means the Tree Advisory Panel established under section 98.

appeal, in relation to a reviewable decision, means an application to the ACAT to review the decision.

appeal period means the period within which an appeal may be made.

approval criteria—see section 20 (1).

at premises includes in or on the premises.

authorised person means an authorised person appointed under section 112.

built-up urban area—see section 8.

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cancellation criteria, for part 4 (Registration of trees)—see section 52 (1) (b).

canopy contribution, for subdivision 3.3.2 (Approved activities—canopy contributions)—see section 34.

canopy contribution agreement—see section 35 (2).

connected, for part 7 (Enforcement)—see section 111.

conservator means the conservator of flora and fauna.

custodian, for territory land that is public land, unleased land or both, means the administrative unit or other entity with administrative responsibility for the land.

damage a protected tree—see section 14.

decision-maker—see section 13.

declared site means an area declared to be a declared site under section 69.

development—

- (a) for this Act generally—see the [Planning and Development Act 2007](#), section 7; and
- (b) for part 6 (Development applications—conservator’s advice)—see section 106.

development application—see the [Planning and Development Act 2007](#), dictionary.

development approval—see the [Planning and Development Act 2007](#), dictionary.

engage in conduct means—

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

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estate development plan—see the *Planning and Development Act 2007*, section 94.

financial settlement, for subdivision 3.3.2 (Approved activities—canopy contributions)—see section 36 (2) (b).

future urban area—see the *Planning and Development Act 2007*, dictionary.

heritage significance—see the *Heritage Act 2004*, section 10.

internally reviewable decision, for part 8 (Notification and review of decisions)—see section 133.

internal review notice, for part 8 (Notification and review of decisions)—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).

leased land means leased territory land, other than land leased for rural purposes, or purposes including rural purposes.

occupier, of premises, for part 7 (Enforcement)—see section 111.

offence, for part 7 (Enforcement)—see section 111.

on-site canopy contribution, for subdivision 3.3.2 (Approved activities—canopy contributions)—see section 36 (2) (a).

premises includes land.

prohibited groundwork—see section 15.

protected tree—see section 9.

protection zone, for a protected tree—see section 12.

provisionally register a tree means provisionally register the tree under section 57.

public tree—see section 9 (c).

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public unleased land—see the [Public Unleased Land Act 2013](#), section 8.

public unleased land permit, for division 5.2 (Tree bonds)—see the [Public Unleased Land Act 2013](#), section 40.

register a tree means register the tree under section 62.

registered tree—see section 10.

registration criteria, for part 4 (Registration of trees)—see section 52 (1) (a).

regulated tree—see section 11.

representative Aboriginal organisation means—

- (a) an organisation declared to be a representative Aboriginal organisation under the [Heritage Act 2004](#), section 14; or
- (b) an organisation prescribed by regulation.

restricted information, for part 4 (Registration of trees)—see section 51.

reviewable decision, for part 8 (Notification and review of decisions)—see section 133.

site declaration, for part 4 (Registration of trees)—see section 51.

tree—

- (a) for this Act generally—includes a palm tree; and
- (b) for division 4.6 (Restricted information)—see section 73.

tree bond—see section 92 (2) (b).

tree bond agreement, for division 5.2 (Tree bonds)—see section 92 (2).

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tree management plan—

- (a) for this Act generally—see section 78; and
- (b) for this Act other than section 78—includes a tree management plan approved under the [Planning and Development Act 2007](#), section 162 (6).

tree protection condition, of a development approval—see section 110 (1) (c).

tree protection direction—see section 44 (1).

tree register—see section 53 (1).

tree reparation direction, for subdivision 3.4.2 (Tree reparation directions)—see section 48 (2).

urban forest—see section 7.

warrant, for part 7 (Enforcement)—see section 111.

Endnotes**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2022.

2 Notification

Notified under the [Legislation Act](#) on 2022.

3 Republications of amended laws

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

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