

ATTACHMENT B

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

2004

ENVIRONMENT AMENDMENT LEGISLATION BILL 2004

EXPLANATORY STATEMENT

Circulated by the Authority of the
Minister for the Environment
Jon Stanhope MLA

ENVIRONMENT AMENDMENT LEGISLATION BILL 2004

EXPLANATORY STATEMENT

Outline

The aim of the Bill is to amend the *Nature Conservation Act 1980* to ensure that any unlicensed clearing of native vegetation in a reserved area or damaging of land in a reserved area is illegal (subject to certain exemptions). New offences of clearing native vegetation on nature reserves, national parks and wilderness areas without a licence, and the offence of damaging land in a reserved area, where damage includes the destruction or removal of rock, soil, sand, stone or similar substance without a licence are introduced.

Each offence has three levels of harm: serious, material or just harm, each coupled with appropriately severe financial penalties modelled on provisions in the *Environment Protection Act 1997* relating to causing environmental harm. The Bill also introduces provisions in the *Nature Conservation Act 1980* allowing for civil enforcement by private individuals and implementing criminal liability for executive officers of corporations (subject to certain defences).

The amendments in relation to the *Environment Protection Act 1997* focus on achieving and reporting on environmental compliance. The amendments require ACT government agencies and entities to include in their annual reports information about their compliance with environmental laws during the year.

Part 1

Clause 1 deals with the name of the proposed Act

Clause 2 deals with the date of commencement of the Act which is on a day fixed by the Minister by written notice

Part 2

Clause 3 explains that the *Nature Conservation Act 1980* is the piece of legislation amended by this part of the Act.

Clause 4 inserts a new provision into the *Nature Conservation Act 1980*; this explains that other legislation applies in relation to offences under this Act. The Note explains that the Criminal Code applies to offences under the Act. In particular those under Division 8.2 clearing native vegetation in reserved area and Division 8.3 damaging land in reserved area.

Clause 5 substitutes a new heading for Division 8.1.

Clause 6 deals with section 59 heading and substitutes a new heading of offences in wilderness areas.

Clause 7 inserts two new divisions into the *Nature Conservation Act 1980*, Division 8.2 clearing native vegetation in reserved areas and Division 8.3 damaging land in reserved areas.

Division 8.2 Clearing native vegetation in reserved areas

Section 60B – explains definitions for this part of the Act these definitions include “causes” and “native vegetation” and “Ramsar wetland”.

Section 60C explains the meaning of clearing native vegetation and lists a range of activities that constitute clearing, such as cutting down felling thinning logging etc

Section 60D defines clearing causing serious harm to a reserved area. This section lists a series of separate and individual outcomes that are each deemed to have caused serious harm.

Section 60E defines clearing causing material harm to a reserved area. Like section 60D, this provision lists a series of separate and individual outcomes that are each deemed to have caused material harm.

The new subdivision 8.2.2 deals with the offences of clearing native vegetation in a reserved area

Section 60F establishes the offence of clearing causing serious harm. The penalty for the offence depends on whether the person causing the harm is reckless, negligent or neither as to the area being a reserved area and that the vegetation is native. 60F(1) prescribes a maximum penalty of \$1,000,000 for corporations or \$200,000 for individuals and up to five years imprisonment or both. These penalties are based on penalties contained in the *Environment Protection Act 1997* for the range of similar offences of causing serious environmental harm, and reflect the level of public concern for the protection of the environment.

Section 60G establishes the offence of clearing causing material harm, it is structured the same way as 60F. The maximum penalty here is lower being 1000 penalty units, which is \$500,000 for a corporation or \$100,000 for an individual and up to 2 years imprisonment or both.

Section 60H establishes the offence of clearing generally. This is a strict liability offence and requires no mental element. A person commits an offence if the person clears native vegetation in a reserved area. The maximum penalty is again lower being 100 penalty units. This is \$10,000 for the individual or \$50,000 for a corporation.

Section 60I defines the range of exemptions to the offence of clearing of native vegetation. Clearing is not an offence if it is licensed, or in accordance with a plan of management for the land, or in accordance with a development approval or in accordance with the bushfire fuel management plan or it is necessary and appropriate to avoid an imminent risk of serious harm to a person, substantial damage to property or serious or material harm to the reserved area.

Section 60J explains the options for an alternative verdict for offences against 60F (clearing causing serious harm) and 60G (clearing causing material harm). If a prosecution for one of these offences is not made out, the Court can find the person guilty of a lesser offence as set out in the table.

Section 60K empowers the Court to make orders for restoration if it finds a person guilty of an offence against section 60F, 60G or 60H. The Court may order the person to take any action it considers appropriate, including action to mitigate the effect of clearing and action to restore or rehabilitate native vegetation to the land cleared. The court could also order the person to provide security for the performance of any obligation under the Order.

Division 8.3 Damaging land in reserved areas

Subdivision 8.3.1 deals with interpretation for Division 8.3.

Section 60L explains the definitions for the concept of damage causing serious harm to the reserved area, these definitions include “causes” and “damage” and offers examples of damage to land.

Section 60M explains the meaning of damage causing serious harm to a reserved area. It is similar in its structure to the parallel provision 60D for clearing causing serious harm in that it lists a series of separate and individual outcomes only one of which must be proven.

Section 60N explains the meaning of damage causing material harm to a reserved area. It lists a series of separate and individual outcomes that are each deemed to have caused serious harm.

Section 60O establishes the offence of damage causing serious harm. The penalty for the offence depends on whether the person causing the harm is reckless, negligent or neither as to the land damaged being in a reserved area and the damage causing serious harm. 60O(1) prescribes a maximum penalty of \$1,000,000 for corporations or \$200,000 for individuals and up to five years imprisonment or both. These penalties are based on penalties contained in the *Environment Protection Act 1997* for the range of similar offences of causing serious environmental harm, and reflect the level of public concern for the protection of the environment.

Section 60P establishes the offence of damage causing material harm; it is structured the same way as 60O. The maximum penalty here is lower being 1000 penalty units, which is \$500,000 for a corporation or \$100,000 for an individual and up to 2 years imprisonment or both.

Section 60Q establishes the offence of damage causing harm. This is a strict liability and requires no mental element. A person commits an offence if the person damages land in a reserved area and the damage causes harm to the area. The maximum penalty is again lower being 100 penalty units. This is \$10,000 for the individual or \$50,000 for a corporation.

Section 60R defines the range of exemptions to the offence of damage to land in reserved areas. Damage to land is not an offence if it is in accordance with a licence, or in accordance with a plan of management for the land, or in accordance with a development approval (DA) or in accordance with a fuel management plan on bushfire prone government land or it is necessary and appropriate to avoid an imminent risk of serious harm to a person, substantial damage to property or serious or material harm to the reserved area

Section 60S explains the options for an alternative verdict for offences against 60O (damage causing serious harm) and 60P (damage causing material harm). If a prosecution for one of these offences is not made out, the Court can find the person guilty of a lesser offence as set out in the table

Section 60T explains the type of orders available for rehabilitation. A Court can make such an order if it finds a person guilty of an offence against sections 60O, 60 P or 60Q. The options are available for the Court to order the person found guilty to take action to mitigate the effect of the damage or action to rehabilitate the land damaged as closely as possible to the condition before the damage and to ask the person to provide security for the performance of any obligation under the order.

New Part 8A Injunctive Orders

Section 60U explains who can make an application for an injunction and under what circumstances the application can be made. The Court may grant leave to someone if the Court is satisfied that the person has asked the Conservator to apply for an injunction and the Conservator has failed to do so within a reasonable time. The Court must also be satisfied that it is in the public interest that the proceedings should be brought.

Section 60V explains what the Supreme Court may do if it is satisfied that the respondent has contravened or is contravening, or is likely to contravene the Act. This will provide a mechanism to prevent conduct that would amount to a breach of the Act when it is necessary for the protection of native animals or plants in a reserved area.

Section 60W explains that the Supreme Court may make an interim order under section 60V before deciding whether or not to grant a permanent injunction.

Section 60X explains that the Court must take into account the public interest in protecting the environment, when it decides the amount of costs to be awarded.

Section 60Y explains that the Court may order a person applying for an injunction to give security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed. This provision ensures that frivolous and vexatious applications are unlikely to proceed. It is possible that certain proceedings in the public interest may not proceed because the applicant cannot provide security. This provision seeks to balance the public interest in having such proceedings brought against the private interests they can interfere with.

Section 60Z empowers the Court to order the applicant to pay compensation to the respondent for loss that has arisen from the application having been made, if the respondent had not contravened the Act and it is appropriate to make such an order. This is intended to deter vexatious applications, but not deter applications where there is a serious issue for the Court to determine. The Court is asked to consider whether in the circumstances it is appropriate to make the order for compensation so that it can

consider whether, for example, the parties conduct contributed to the application being brought.

Clause 8 introduces a new **section 63(2A)** explaining the new conditions that maybe attached to licences

Clause 9 substitutes a new **section 76** this explains which provisions do not apply to a conservation officer in the exercise of a function under the Act. The new list includes the new provisions the Bill adds to the Act.

Clause 10 introduces a new **section 80AB** this explains the criminal liability of executive officers of corporations. In general terms an executive officer can be found guilty of an offence committed by the corporation if the officer should have done something about it.

Clause 11 inserts new definitions into the dictionary.

Clause 12 inserts definition of endangered paragraph (a) in the dictionary.

Clause 13 explains that renumbering provisions will take place when the *Nature Conservation Act 1980* is next republished under the *Legislation Act*.

Part 3 Amendment of Environment Protection Act 1997

Clause 14 explains that this part amends the *Environment Protection Act 1997*

Clause 15 inserts a new section **158A(3)(c)**. This provision requires agencies to include in their annual reports the effect of their actions on the environment, including details of compliance with environmental laws and standards and any contravention of those law and standards. This would include discharge of pollutants causing environmental harm, or breach of the new land clearing provisions introduced by this Bill.