

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

**TREE PROTECTION (INTERIM SCHEME) BILL
2001**

EXPLANATORY MEMORANDUM

Circulated with the authority of
Brendan Smyth MLA,
Minister for Urban Services

EXPLANATORY MEMORANDUM

Outline

This Bill provides interim protection for trees likely to be included on a Significant Tree Register until more comprehensive legislation can be enacted and the Register established.

The objectives of the Bill are to:

- define what constitutes a significant tree for the purposes of interim protection;
- establish and define the functions of an advisor to the Conservator;
- define what constitutes a 'tree damaging activity';
- establish an approvals system to permit a tree damaging activity to be undertaken on a significant tree and empower the Conservator to issue such approvals;
- establish appeal rights to the Administrative Appeals Tribunal; and
- establish penalties for undertaking a tree damaging activity without approval from the Conservator.

Revenue/Cost Implications

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

Formal Clauses

Part 1- PRELIMINARY:

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

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

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

Clause 5 ensures that trees identified for removal in Development Approvals current at the time of the commencement of the Bill, and development applications lodged but not determined before the commencement of the Bill will be exempt from this Bill. This ensures that the law applying to any application is the law that is in force at the time that the application is lodged.

PART 2 – PROTECTION OF SIGNIFICANT TREES

Clause 6 defines the significant trees to which the Bill applies. The intent is to ensure that protection is provided to the majority of trees on non-rural leased land which may be found to be significant when a future Significant Tree Register is established.

Clause 7 provides for significant trees to be declared by regulation

Clause 8 defines the tree damaging activities from which this Bill protects significant trees. The definition is intended to control activities that would kill the tree, lead to the early death of the tree or severely disfigure the appearance of the tree. It is not intended to include maintenance pruning. Maintenance pruning is pruning that does not adversely affect the general appearance of the tree and is done in accordance with the Australian Standard 4373 – Pruning of amenity trees. This Standard can be understood and easily complied with by the general public without technical training in arboriculture.

Clause 9 defines the meaning of 'protection zone'

Clause 10 makes it an offence to undertake a tree damaging activity on a significant tree without approval and sets the penalty for the offence. The offence does not apply in some emergency/urgent situations described here, nor does it apply to maintenance pruning that is not likely to adversely affect the general health and appearance of a tree.

Clause 11 requires the Conservator to be advised of a tree damaging activity, which has been undertaken in urgent circumstances without prior approval. A penalty is set for failure to comply with the requirement.

PART 3 – DEALING WITH SIGNIFICANT TREES

Clause 12 allows for '*Criteria for Approval to Undertake a Tree Damaging Activity*' to be determined by disallowable instrument.

Clause 13 outlines the process for applying to the Conservator for approval to undertake a tree damaging activity.

Clause 14 allows the Conservator to require an applicant to provide additional information or documents to enable the Conservator to decide an application. Where the Conservator has requested but not received this further information the clause allows the Conservator to refuse to further consider the application.

Clause 15 provides the Conservator with the power to approve an application to undertake a tree damaging activity and set conditions on the approval. It

defines the function of the '*Criteria for Approval to Undertake a Tree Damaging Activity*' and the role of the Advisor in the process.

Clause 16 sets out who has to be notified about a decision by the conservator to approve or reject an application to undertake a tree damaging activity, the nature of that notice and when the approval takes effect.

Clause 17 defines the term of the approval, which will be for a period of at least 1 year, unless the approval is cancelled sooner, under Clause 19.

Clause 18 requires the Conservator to keep a register of approvals and states what information must be contained in the register.

Clause 19 outlines the grounds on which the Conservator can cancel an approval, prescribes who must be notified of the cancellation and when the cancellation takes effect.

Clause 20 allows for free public access to the approvals register and allows a person to take a copy of the register upon the payment of a fee.

PART 4 – ADVISER TO CONSERVATOR

Clause 21 requires the Minister to appoint a technically competent independent Advisor to assist the Conservator in deciding whether to approve or reject applications to undertake tree-damaging activities.

Clauses 22–24 deal with administrative matters regarding the appointment of an Advisor to the Conservator and the appointment of a person to act as an adviser in circumstances where the Adviser declares a conflict of interest.

PART 5 – ENFORCEMENT

Division 5.1 - General

Clause 25 sets out the interpretation of various terms used within this Division.

Clause 26 identifies what things can be connected with an offence for the purposes of this Part of the Bill.

Division 5.2 – Authorised persons

Clauses 27 and 28 allow for the appointment of authorised persons for the Bill and the issuing of identity cards to those persons.

Division 5.3 – Powers of authorised persons

Clauses 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 stipulate the requirements under various circumstances for an authorised officer to enter premises:

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

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

Division 5.4 - Miscellaneous

Clause 40 modifies the effect of the general privilege against selfincrimination for the purposes of evidence obtained under Part 5 of the Bill.

Clause 41 enables a person to claim professional privilege in relation to the requirement to make information available or answer a question.

Clause 42 43 and 44 create the offences of:

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

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

Clause 45 deals with the minimisation of damage by an authorised officer when carrying out their functions under this part.

Clause 46 entitles a person who suffers loss or expense as a result of performance of a function under this part to compensation and deals with administrative matters associated with this.

PART 6 – REVIEW OF DECISIONS

Clause 47 sets out the decisions that are reviewable under this Bill by the Administrative Appeals Tribunal and who may make an appeal.

PART 7 - MISCELLANEOUS

Clause 48 is a provision that allows the Minister to determine fees and the Executive to make regulations for the purposes of this Bill.

Clause 49 determines what determines the requirement to pay determined fees and charges.

Clause 50 establishes a power to make regulations concerning fees and charges.

Clause 51 allows for the Minister to approve forms for use under this Bill.

Clause 52 allows for the Executive to make regulations for this Bill and prescribes a maximum penalty for offences against the regulations.

PART 8 TRANSITIONAL PROVISIONS

Clause 53 amends the *Land (Planning and Environment) Act 1991* to require the mandatory referral to the Conservator of any development application relating to land on which there is a significant tree that is planned to be removed as part of the development.

Dictionary – defines the terms used within this Bill.