

Urban Forest Regulation 2023

Subordinate law SL2023–39

made under the

Urban Forest Act 2023

EXPLANATORY STATEMENT

OVERVIEW

This explanatory statement relates to the Urban Forest Regulation 2023 (the Regulation) made under the *Urban Forest Act 2023* (the Act). It has been prepared to assist the reader of the Regulation. It does not form part of the Regulation and has not been endorsed by the Legislative Assembly.

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

The Regulation provides the details of the canopy contribution framework agreements and tree bond agreements, including contribution and bond amounts, and bond periods. This supports the Act in enhancing Canberra's tree canopy to reach a target of 30 per cent canopy coverage by 2045.

The Canopy Contribution Framework will ensure live trees approved for removal are replaced through an adequate number of replacement trees and/or an equivalent financial contribution to the expansion and renewal of the public urban forest. These amounts provide a mechanism for incentivising retention or onsite replanting of trees approved for removal. This does not remove or reduce existing restrictions on tree removal. This reform will contribute to maintaining and increasing urban canopy cover through encouraging tree retention and replanting.

Tree Bond agreements will ensure live trees that are at risk from nearby activities or works will be protected according to the applicant's approved tree management plan. The bond amount and periods provide a mechanism for incentivising tree protection.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Regulation due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004*.

Rights engaged

The Regulation engages the following sections of the Human Rights Act:

- section 9 – Right to Life (promoted)
- section 12 – Right to Privacy and Reputation (limited)

Rights Promoted

Right to Life

The Regulation promotes the right to life. It supports the Act in addressing the ACT Government's obligation to protect its citizens through maintaining and enhancing environmental conditions of Canberra that impact on the right to life.

The Regulation is one action to secure a liveable and healthy future for the Canberra community and ensure people have access to an urban forest to support their health and wellbeing. It does this by setting the canopy contribution amounts and tree bonds amounts and periods that apply when a person has approval to remove a protected tree or conduct works that may impact a protected tree. This supports the ACT Government's obligation to conserve urban forest resources for the benefit of people in the ACT now and in the future by ensuring conservation is treated as an integral part of the planning and implementation of development activities.

Rights Limited

Right to Privacy and Reputation

Nature of the right and the limitation

The Regulation will provide detail for the Act which establishes laws relating to the urban forest, including those relating to trees on leased (private) land, in such a way as to impact on a person's ability to enjoy their home. This Regulation requires a person who enters a Canopy Contribution Agreement under the Act to replant a fixed number of equivalent trees on their property or pay a set amount for the replacement of their benefits on public land. The Regulation also sets out the amount and factors that must and may be considered when determining the amount and period of a tree bond agreement. This requires persons conducting works to take reasonable steps to protect nearby protected trees.

Legitimate purpose

The objective to be achieved by the Regulation is that all people protect regulated, registered, remnant and public trees on and adjacent to their properties and incorporate the values of trees and their protection into design and development decisions. This contributes towards having a sustainable urban forest with a tree canopy covering 30 percent of the Territory's existing and future urban area by 2045.

A strong and resilient urban forest provides a range of climate mitigation benefits, such as protection from heat island effects and reduced damage from storm surges as trees can provide protection to buildings and infrastructure.

This Regulation progresses this by supporting the canopy contribution and tree bond processes that have been established by the Act. The Regulation specifies the contribution that a person who is approved to remove a protected tree must make to the Canopy Contribution Framework. This contribution takes the form of on-site replanting or a monetary contribution where this is not possible. The Regulation also sets the minimum and maximum amount and factors that impact the decision-making for the amount and duration of a tree bond agreement.

Rational connection between the limitation and the purpose

Canopy Contribution Agreements encourage people to offset the impact of their decisions where these decisions are likely to reduce the urban forest's overall resilience and sustainability and canopy cover. Trees Bonds encourage people to better protect existing protected trees so that they do not reduce the resilience and sustainability of the urban forest and Canberra's canopy coverage.

Proportionality

The limitations on the right to privacy are considered proportionate to the legitimate purpose of tree protection and increasing canopy coverage. The limitation on privacy is achieved using the least restrictive means possible, because the canopy contribution amounts and bond agreement amounts and periods only apply where applicants have chosen to conduct works. No cost and low-cost canopy contribution pathways are available, as are discounts for concession holders as outlined in section 7(3) of the Regulation. Applicants who are making an on-site canopy contribution may choose the size and location of the replacement trees they are planting, so long as there is adequate planting space, and the combined trees will achieve the required canopy cover within twenty years. Where a tree bond is applied the bond will be fully refunded after a defined period where the tree has not been damaged, or partially refunded or not refunded where damage has occurred.

CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 Name of Regulation

This clause states that the name of the Regulation is the Urban Forest Regulation 2023 (the Regulation).

Clause 2 Commencement

This clause provides for the commencement of the Regulation. The Regulation commences on the commencement of the *Urban Forest Act 2023*, section 3.

Clause 3 Dictionary

This clause states that the dictionary at the end of the Regulation is, once enacted, part of the Regulation.

Clause 4 Notes

This clause states that a note included in this Regulation is explanatory and does not form part of the Regulation.

PART 2 CANOPY CONTRIBUTION AGREEMENTS

Clause 5 Definitions –pt2

This clause defines *canopy cover restoration period* for this part as the period of time within which tree canopy cover must be restored. The Minister sets this period to declare how long replacement trees have to grow until they must offer the same canopy cover as the tree or trees approved for removal provided at the time of their application for removal. This definition is used later in the regulation as a factor in the calculation of how many replacement trees must be planted, based on the principle of replacing the canopy that was lost within this set number of years

This clause notes that the definition for *financial settlement amount* for this part is provided in section 7(1).

This clause defines the term *homeowner* for the Regulation as a person who is a lessee of land in a residential zone who provides evidence that they have been living on the land for at least 2 years or intend to live on the land for at least 2 years. The person must meet all elements of this definition to qualify as a homeowner for the purposes of this regulation. Written evidence includes documented evidence of occupancy for the relevant period provided to support a claim that the person has been or will be living on the land for at least 2 years. This may include, for instance, proof of the person's address on the electoral roll or driver's licence, or evidence of utilities provided to the land in the person's name.

**Clause 6 Canopy contribution agreements—on-site canopy contribution—
Act, s 36 (5) (a)**

This clause establishes two distinct calculations for the number of trees that a person entering a canopy contribution agreement must plant on the land. This supports section 36 of the Act, which outlines the conditions of canopy contribution agreements. As per section 36, a person must make a contribution to restoring the removed tree canopy through either or both an on-site canopy contribution and a financial settlement. This clause outlines that a person is to make an on-site canopy contribution unless there is not sufficient space on the land to plant the required number of trees. Where this occurs, the person is to plant as many of the replacement trees as is suitable on the land and pay the remaining portion of the canopy contribution as a financial settlement.

This clause establishes that a homeowner must plant two trees for every protected tree removed. A person other than a homeowner must plant the number of replacement trees that will result in the replacement trees growing to provide the same amount of canopy cover as the protected tree approved for removal at the end of the canopy cover restoration period.

A replacement tree must be of a minimum size, and the Minister may determine the factors that are used to calculate the non-homeowner contribution, these being: the canopy cover restoration period, the minimum size of a replacement tree and the projected canopy area of a replacement tree at the end of the canopy cover restoration period. Such a declaration is to be made as a disallowable instrument.

**Clause 7 Canopy contribution agreements—financial settlement—Act, s 36
(5) (b)**

This clause establishes two distinct calculations for the financial settlement that a person entering a canopy contribution agreement must pay. A homeowner must pay a set amount for every protected tree removed. A person other than a homeowner must pay an amount based on a formula that comprises the modified net loss of benefits from tree removal and the expense to replace these benefits in a set period.

In this formula, the amounts lost and gained reflect the benefits provided by a protected tree and by any replacement trees. The canopy cover restoration period outlines the timeframe in which the removed tree canopy cover is to be replaced. The replanting cost reflects the cost of planting the required number of replacement trees to replace the removed tree canopy cover. This replanting cost comprises costs associated with both the planting and establishment of new trees. The zone modifier is a multiplier which varies the overall amount according to the Territory Plan zone of the block from which the tree is being removed. The Minister may determine each of these components via a disallowable instrument.

This clause outlines that a homeowner in possession of a Commonwealth concession card is only eligible to pay 50% of the calculated financial settlement amount. The cards that qualify as Commonwealth concessions cards in this instance are those listed in this clause.

PART 3 TREE BONDS

Clause 8 Tree bond agreements—Act, s 92 (3)

This clause establishes the documents that the decision-maker may, by written notice given to the applicant, require the applicant for a tree bond agreement to provide.

The first document prescribed is a condition report of the tree prior to any works conducted. The condition report will establish a clear baseline of tree condition from which to measure future tree condition against during and upon completion of the bond period.

The second document prescribed is a statement outlining the proposed tree protection measures and how these are in accordance with any government policy relating to tree protection, such as tree management plan guidelines. The statement will ensure that the tree bond is linked to a clear agreed set of compliant tree protection measures.

Clause 9 Tree bond amount—Act, s 93 (5) (a)

This clause establishes the amount of a tree bond. This outlines the minimum and maximum bond amount that may be applied to a registered tree and to any other protected tree.

Clause 10 Tree bond amount and period—matters decision-maker must and may consider—Act, s 93 (5) (b)

This clause establishes the matters the decision-maker must or may take into account when deciding a tree bond agreement or the period for which a tree bond agreement has effect.

DICTIONARY

The dictionary defines terms used in the Regulation.