

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment)

Tree Protection Bill 2005

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2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment)

Tree Protection Bill 2005

A Bill for

An Act for the protection of trees, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Tree Protection Act 2005*.

4 **2 Commencement**

5 (1) This Act (other than the prescribed provisions) commences on a day
6 fixed by the Minister by written notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 (2) The prescribed provisions commence on the later of—

16 (a) the day fixed under subsection (1) for the commencement of
17 this Act; and

18 (b) the commencement of the *Utilities Amendment Act 2005*.

19 (3) In this section:

20 ***prescribed provisions*** means the following provisions:

21 (a) section 17 (1) (e) (i), 3rd and 4th dot points;

22 (b) section 17 (1) (e) (iii);

23 (c) section 17 (1) (f) (ii);

24 (d) schedule 1, items 1.25 to 1.28.

1 **3 Objects of Act**

- 2 (1) The objects of this Act are—
- 3 (a) to protect individual trees in the urban area that have
- 4 exceptional qualities because of their natural and cultural
- 5 heritage values or their contribution to the urban landscape;
- 6 and
- 7 (b) to protect urban forest values that may be at risk because of
- 8 unnecessary loss or degradation; and
- 9 (c) to protect urban forest values that contribute to the heritage
- 10 significance of an area; and
- 11 (d) to ensure that trees of value are protected during periods of
- 12 construction activity; and
- 13 (e) to promote the incorporation of the value of trees and their
- 14 protection requirements into the design and planning of
- 15 development; and
- 16 (f) to promote a broad appreciation of the role of trees in the urban
- 17 environment and the benefits of good tree management and
- 18 sound arboricultural practices.

- 19 (2) In this section:

20 ***urban forest*** means the trees located in the built-up urban area.

21 ***urban forest values*** means the amenity and economic and

22 environmental benefits derived from the urban forest and the

23 associated tree canopy cover.

1 **4 Dictionary**

2 The dictionary at the end of this Act is part of this Act.

3 *Note 1* The dictionary at the end of this Act defines certain terms used in this
4 Act, and includes references (*signpost definitions*) to other terms
5 defined elsewhere.

6 For example, the signpost definition ‘*heritage significance*—see the
7 *Heritage Act 2004*, section 10.’ means that the term ‘heritage
8 significance’ is defined in that section and the definition applies to this
9 Act.

10 *Note 2* A definition in the dictionary (including a signpost definition) applies to
11 the entire Act unless the definition, or another provision of the Act,
12 provides otherwise or the contrary intention otherwise appears (see
13 Legislation Act, s 155 and s 156 (1)).

14 **5 Notes**

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

16 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
17 notes.

18 **6 Offences against Act—application of Criminal Code etc**

19 Other legislation applies in relation to offences against this Act.

20 *Note 1* *Criminal Code*
21 The Criminal Code, ch 2 applies to all offences against this Act (see
22 Code, pt 2.1).

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

27 *Note 2* *Penalty units*
28 The Legislation Act, s 133 deals with the meaning of offence penalties
29 that are expressed in penalty units.

30 **7 Application of Act—built-up urban areas**

31 (1) This Act applies to trees on land in built-up urban areas.

1 (2) A ***built-up urban area*** is an area of land declared, in writing, by the
2 Minister to be a built-up urban area for this Act.

3 (3) A declaration is a notifiable instrument.

4 *Note* A notifiable instrument must be notified under the Legislation Act.

1 **Part 2** **Important terms**

2 **8** **Protected trees**

3 For this Act, each of the following is a *protected tree*:

- 4 (a) a registered tree;
- 5 (b) a regulated tree.

6 **9** **Registered trees**

7 A *registered tree* is a tree that is registered (or provisionally
8 registered) under part 7 (Registration of trees).

9 **10** **Regulated trees and tree management precincts**

10 (1) A *regulated tree* is a living tree (other than a registered tree or a
11 palm tree) that is on leased land within a tree management precinct
12 and—

- 13 (a) is 12m or more high; or
- 14 (b) has a trunk with a circumference of 1.5m or more, 1m above
15 natural ground level; or
- 16 (c) has 2 or more trunks and the total circumference of all the
17 trunks, 1m above natural ground level, is 1.5m or more; or
- 18 (d) has a canopy 12m or more wide.

19 (2) However, a tree is not a regulated tree if it is declared to be a pest
20 plant under the Land Act, section 261.

21 (3) A *tree management precinct* is an area declared under part 5 to be a
22 tree management precinct.

23 **11** **Protection zone for protected tree**

24 (1) The *protection zone* for a protected tree is—

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

1 **13** **Meaning of *major pruning***

2 (1) In this Act:

3 *major pruning* means pruning other than lopping, pollarding or
4 minor pruning.

5 (2) In this section:

6 (a) in relation to a registered tree—*minor pruning* means pruning
7 (other than lopping or pollarding) done in accordance with
8 AS 4373 that—

9 (i) only involves removing deadwood; or

10 (ii) does not involve removing any limbs that have a diameter
11 greater than 50mm; or

12 (iii) is the first pruning of the tree in the calendar year, affects
13 less than 10% of the canopy and does not alter the overall
14 shape of the canopy; and

15 (b) in relation to a regulated tree—*minor pruning* means pruning
16 (other than lopping or pollarding) done in accordance with
17 AS 4373 that—

18 (i) does not adversely affect the general appearance of the
19 tree; or

20 (ii) for a fruit tree—is done for fruit production.

21 **14** **Meaning of *prohibited groundwork***

22 In this Act:

23 *prohibited groundwork*—

24 (a) in relation to the protection zone for a protected tree—a person
25 does *prohibited groundwork* in the protection zone if the
26 person—

- 1 (i) contaminates the soil in the protection zone with
2 something that is poisonous to trees; or
- 3 (ii) cuts any of the tree's roots in the protection zone that
4 have a diameter greater than 50mm; or
- 5 (iii) does either of the following in the protection zone, other
6 than in cultivating the soil for horticultural purposes:
- 7 (A) excavates to a depth greater than 10cm over an area
8 4m² or larger;
- 9 (B) raises the soil level by more than 10cm above the
10 natural soil level over an area 4m² or larger; or
- 11 (iv) does anything else prescribed by regulation for this
12 paragraph; and
- 13 (b) in relation to a declared site—a person does *prohibited*
14 *groundwork* in the declared site if the person—
- 15 (i) does either of the following in the declared site, other
16 than in cultivating the soil for horticultural purposes:
- 17 (A) excavates to a depth greater than 10cm over an area
18 4m² or larger;
- 19 (B) raises the soil level by more than 10cm above the
20 natural soil level over an area 4m² or larger; or
- 21 (ii) does anything else prescribed by regulation for this
22 paragraph.

23 **Examples for par (a) (iii) and (b) (i) of cultivation for horticultural purposes**

24 1 preparing garden beds for planting

25 2 planting trees and shrubs

26 *Note* An example is part of the Act, is not exhaustive and may extend, but
27 does not limit, the meaning of the provision in which it appears (see
28 Legislation Act, s 126 and s 132).

1 **Division 3.2 Prohibited activities**

2 **15 Damaging protected trees**

3 (1) A person commits an offence if—

4 (a) the person does something that damages a protected tree; and

5 (b) the person is reckless about whether doing the thing would
6 damage the protected tree.

7 Maximum penalty: 400 penalty units.

8 (2) A person commits an offence if the person does something and is
9 reckless about whether doing the thing would damage a protected
10 tree.

11 Maximum penalty: 200 penalty units.

12 (3) A person commits an offence if—

13 (a) the person does something that damages a protected tree; and

14 (b) the person is negligent about whether doing the thing would
15 damage the protected tree.

16 Maximum penalty: 100 penalty units.

17 (4) A person commits an offence if the person does something that
18 damages, or is likely to damage, a protected tree.

19 Maximum penalty: 50 penalty units.

20 (5) For subsections (1), (2) and (3), strict liability applies to the
21 circumstance that the tree is a protected tree.

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

23 **16 Doing prohibited groundwork**

24 (1) A person commits an offence if—

25 (a) the person does prohibited groundwork in—

- 1 (i) the protection zone for a protected tree; or
2 (ii) a declared site; and
3 (b) the person is reckless about whether the groundwork is
4 prohibited groundwork in—
5 (i) the protection zone for a protected tree; or
6 (ii) a declared site.
7 Maximum penalty: 200 penalty units.
- 8 (2) A person commits an offence if—
9 (a) the person does prohibited groundwork in—
10 (i) the protection zone for a protected tree; or
11 (ii) a declared site; and
12 (b) the person is negligent about whether the groundwork is
13 prohibited groundwork in—
14 (i) the protection zone for a protected tree; or
15 (ii) a declared site.
16 Maximum penalty: 100 penalty units.
- 17 (3) A person commits an offence if the person does prohibited
18 groundwork in—
19 (a) the protection zone for a protected tree; or
20 (b) a declared site.
21 Maximum penalty: 50 penalty units.
- 22 (4) For subsections (1) and (2), strict liability applies to the
23 circumstances that—
24 (a) the tree is a protected tree; and
25 (b) the groundwork is done in—

1 (i) the protection zone for the tree; or

2 (ii) a declared site.

3 (5) An offence against subsection (3) is a strict liability offence.

4 **17 Exceptions to s 15 and s 16**

5 (1) Section 15 and section 16 do not apply to—

6 (a) an activity approved under section 23 or section 27 that is done
7 in accordance with the conditions (if any) of the approval
8 (whether or not done by the person who applied for the
9 approval); or

10 (b) the removal of a tree if the registration of the tree is cancelled
11 under division 7.3 for safety reasons; or

12 (c) anything done in accordance with—

13 (i) a tree management plan; or

14 (ii) a tree protection direction; or

15 (iii) a direction under the *Plant Diseases Act 2002*, section 13
16 (Direction for seizure, disinfection, destruction etc of
17 plants etc); or

18 (d) anything done in relation to a regulated tree in accordance with
19 an approval for a development under the Land Act, part 6; or

20 (e) anything done in relation to a regulated tree under—

21 (i) any of the following provisions of the *Utilities Act 2000*:

- 22 • section 105 (Installation of network facilities);
- 23 • section 106 (Maintenance of network facilities);
- 24 • section 225F (Installation of territory network
25 facilities);
- 26 • section 225G (Maintenance of territory network
27 facilities); or

- 1 (ii) a network protection notice given under that Act,
2 section 125; or
- 3 (iii) a territory network protection notice given under that Act,
4 section 225X; or
- 5 (iv) a notice under the *Roads and Public Places Act 1937*,
6 section 13 (Trees etc overhanging public places); or
- 7 (f) anything done in relation to a registered tree under any of the
8 following provisions of the *Utilities Act 2000* for the purpose
9 of protecting life or property if it is not practicable because of
10 the urgency of the situation to obtain an approval under
11 section 27:
- 12 (i) section 106 (Maintenance of network facilities); or
- 13 (ii) section 225G (Maintenance of territory network
14 facilities); or
- 15 (g) anything done honestly by a relevant person in the exercise or
16 purported exercise of a function under the *Emergencies*
17 *Act 2004* for the purpose of protecting life or property, or
18 controlling, extinguishing or preventing the spread of fire.
- 19 (2) However, to remove any doubt, it is not an exception to an offence
20 against section 15 or section 16 in relation to a registered tree or a
21 declared site that the damage or prohibited groundwork was carried
22 out in accordance with an approval for a development under the
23 Land Act, part 6.
- 24 (3) In this section:
- 25 **relevant person** means—
- 26 (a) the chief officer (fire brigade); or
- 27 (b) any other member of the fire brigade; or
- 28 (c) the chief officer (rural fire service); or
- 29 (d) any other member of the rural fire service; or

1 (e) anyone else under the control of the chief officer (fire brigade)
2 or the chief officer (rural fire service); or

3 (f) a police officer.

4 **18 Contravening tree protection conditions of development**
5 **approval**

6 (1) This section applies if—

7 (a) the conservator gives advice under section 80 in relation to a
8 development; and

9 (b) an approval for the development is in effect under the Land
10 Act, part 6; and

11 (c) the approval is subject to a condition (a *tree protection*
12 *condition*) requiring a person to do or not do something in
13 relation to—

14 (i) a protected tree; or

15 (ii) the protection zone for a protected tree; or

16 (iii) a declared site.

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

19 Maximum penalty: 50 penalty units.

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

21 **Division 3.3 Approved activities**

22 **19 Criteria for approval**

23 (1) The Minister may, in writing, determine criteria (the *approval*
24 *criteria*) for approving an activity that would or may—

25 (a) damage a protected tree; or

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

- 4 (2) A determination is a notifiable instrument.

5 *Note* A notifiable instrument must be notified under the Legislation Act.

6 **20 Application for approval of tree damaging etc activity**

7 A person may apply, in writing, to the conservator for approval for
8 an activity that would or may—

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

13 *Note 1* If a form is approved under s 108 for an application, the form must be
14 used.

15 *Note 2* A fee may be determined under s 107 for an application.

16 **21 Further information for approval application**

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

24 **22 Advisory panel advice on approval application**

25 The conservator may ask the advisory panel for advice on the
26 application.

- 1 **23** **Decision on approval application**
- 2 (1) Within 30 days after the day the conservator receives the
- 3 application, the conservator must decide whether to approve the
- 4 activity to which it relates.
- 5 (2) In working out the 30-day period, any period when a requirement
- 6 under section 21 (1) was not complied with is disregarded.
- 7 (3) In making a decision on the application, the conservator must have
- 8 regard to—
- 9 (a) the approval criteria; and
- 10 (b) the advice (if any) of the advisory panel; and
- 11 (c) anything else the conservator considers relevant.
- 12 (4) An approval may be given subject to conditions stated in the
- 13 approval.
- 14 **24** **Notice of decision on approval application**
- 15 (1) For an application in relation to a declared site, the conservator must
- 16 give written notice of the decision on the application to—
- 17 (a) the applicant; and
- 18 (b) the lessee of, or land management agency for, the land where
- 19 the site is located; and
- 20 (c) the planning and land authority.
- 21 (2) For any other application, the conservator must give written notice
- 22 of the decision on the application to—
- 23 (a) the applicant; and
- 24 (b) the lessee of, or land management agency for, the land where
- 25 the tree is located; and
- 26 (c) the lessee of, or land management agency for, the land where
- 27 the activity is to be undertaken; and
-

- 1 (d) the lessee of land that—
2 (i) adjoins the land where the tree is located; and
3 (ii) is within 50m of the tree; and
4 (e) if the application relates to a tree that has heritage
5 significance—the heritage council.
- 6 (3) However, the conservator need not give more than 1 notice to a
7 particular person.
- 8 (4) The conservator may give written notice of the decision to anyone
9 else the conservator considers appropriate.

10 **25 Operation of approval**

- 11 (1) Subject to section 103 (Application for reconsideration of certain
12 decisions), an approval takes effect on the date stated in the notice
13 of decision.
- 14 (2) The date stated in the notice must be at least 14 days after the day
15 the notice is given to the applicant.
- 16 (3) Unless sooner cancelled, the approval remains in force for the
17 period stated in the approval.
- 18 (4) The conservator may, in writing, extend the approval for a stated
19 period if satisfied that the activity still satisfies the approval criteria.
- 20 (5) The approval may be extended under subsection (4) even if it has
21 already ended.

22 **26 Cancellation of approval**

- 23 (1) The conservator may cancel an approval if satisfied that the activity
24 approved does not satisfy, or no longer satisfies, the approval
25 criteria.
- 26 (2) For an approval in relation to a declared site, the conservator must
27 give written notice of the cancellation to—

- 1 (a) the applicant; and
- 2 (b) the lessee of, or land management agency for, the land where
- 3 the site is located; and
- 4 (c) the planning and land authority.
- 5 (3) For any other approval, the conservator must give written notice of
- 6 the cancellation to—
- 7 (a) the applicant; and
- 8 (b) the lessee of, or land management agency for, the land where
- 9 the tree is located; and
- 10 (c) the lessee of, or land management agency for, the land where
- 11 the activity was approved to be undertaken; and
- 12 (d) the lessee of land that—
- 13 (i) adjoins the land where the tree is located; and
- 14 (ii) is within 50m of the tree.
- 15 (4) However, the conservator need not give more than 1 notice to a
- 16 particular person.
- 17 (5) For subsection (2) (a) and (3) (a), it is sufficient if the conservator
- 18 sends the notice to the applicant at the address last given to the
- 19 conservator by the applicant.
- 20 (6) The conservator may give written notice of the cancellation to
- 21 anyone else the conservator considers appropriate.
- 22 (7) Subject to section 103 (Application for reconsideration of certain
- 23 decisions), the cancellation takes effect on the date stated in the
- 24 notice of cancellation.
- 25 (8) The date stated in the notice must be at least 14 days after the day
- 26 the notice is given to the applicant.

- 1 **27 Approval in urgent circumstances or for minor works**
- 2 (1) A person may apply to the conservator under this section for an
- 3 approval for an activity that would or may—
- 4 (a) damage a protected tree; or
- 5 (b) be prohibited groundwork in—
- 6 (i) the protection zone for a protected tree; or
- 7 (ii) a declared site.
- 8 (2) The application may be made orally or in writing.
- 9 (3) The conservator may approve the activity if satisfied that—
- 10 (a) the circumstances require the application to be considered
- 11 urgently; and
- 12 (b) the activity is necessary to protect the health or safety of
- 13 people or animals, or public or private property.
- 14 (4) The conservator may also approve an activity that is, or may be,
- 15 major pruning or prohibited groundwork in the protection zone for a
- 16 protected tree if the conservator is satisfied the activity will have
- 17 little or no adverse impact on the health or stability of the tree.
- 18 (5) The approval may be given orally or in writing but the conservator
- 19 must make a written record of any oral approval as soon as
- 20 practicable after giving it.
- 21 (6) The approval may be given subject to conditions stated in the
- 22 approval.
- 23 (7) The conservator must give written notice of the decision on the
- 24 application to the applicant.
- 25 (8) Unless sooner cancelled, the approval has effect for the period stated
- 26 in the approval.

- 1 **28** **Contravening conditions of approval**
- 2 (1) If an approval is given under section 23 or section 27 subject to
- 3 conditions, the person to whom the approval is given must—
- 4 (a) ensure that a notice of the conditions of approval is
- 5 prominently displayed near the tree or declared site; or
- 6 (b) take other reasonable steps to ensure that anyone who may do
- 7 anything to the tree or in the protection zone for the tree or in
- 8 the declared site knows about the conditions of the approval.
- 9 Maximum penalty: 50 penalty units.
- 10 (2) A person commits an offence if the person contravenes a condition
- 11 of an approval given under section 23 or section 27.
- 12 Maximum penalty: 50 penalty units.
- 13 (3) An offence against this section is a strict liability offence.

1 **Part 4 Tree management plans**

2 *Note 1* A tree management plan may provide for activities that may be
3 undertaken in relation to a tree and may set out conditions about how
4 the activities are to be undertaken. Anything done in relation to a
5 protected tree in accordance with a tree management plan for the tree is
6 an exception to the offences against s 15 (Damaging protected tree) and
7 s 16 (Doing prohibited groundwork).

8 *Note 2* This part also operates for an amendment or repeal of a tree
9 management plan (see Legislation Act, s 46 (Power to make instrument
10 includes power to amend or repeal)).

11 **29 Guidelines for tree management plans**

12 (1) The conservator may, in writing, determine guidelines for tree
13 management plans.

14 (2) A determination is a notifiable instrument.

15 *Note* A notifiable instrument must be notified under the Legislation Act.

16 **30 Proposal or application for approval of tree management
17 plan**

18 (1) The conservator may, on the conservator's own initiative, propose a
19 tree management plan for a registered tree.

20 (2) The land management agency for the land where a registered tree is
21 located may apply for a tree management plan for the tree.

22 (3) Anyone else may apply for approval of a tree management plan for
23 any tree on leased land in a built-up urban area.

24 *Note 1* If a form is approved under s 108 for an application, the form must be
25 used.

26 *Note 2* A fee may be determined under s 107 for an application.

27 (4) An application under subsection (2) or (3) must be in writing and
28 must be given to the conservator.

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

4 **31 Further information for tree management plan application**

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

12 **32 Advisory panel advice on proposed tree management
13 plan**

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

16 **33 Decision on tree management plan**

- 17 (1) If the conservator proposes, or receives an application for approval
18 of, a tree management plan, the conservator must decide whether to
19 approve the plan.
- 20 (2) For a tree management plan for which approval is applied for, the
21 conservator must make the decision within 30 days after the day the
22 conservator receives the application.
- 23 (3) In working out the 30-day period, any period when a requirement
24 under section 31 (1) was not complied with is disregarded.
- 25 (4) In making the decision, the conservator must have regard to—
26 (a) the guidelines approved under section 29; and
27 (b) the advice (if any) of the advisory panel; and
28 (c) anything else the conservator considers relevant.

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

4 **34 Notice of decision on tree management plan**

- 5 (1) The conservator must give written notice of the decision on the tree
6 management plan to the applicant (if any).
- 7 (2) If the decision is to approve the tree management plan, the
8 conservator must also give written notice of the decision to—
- 9 (a) the lessee of the land where the tree is located; and
- 10 (b) if the tree is on leased land—the lessee of land that—
- 11 (i) adjoins the land where the tree is located; and
- 12 (ii) is within 50m of the tree; and
- 13 (c) if the plan is for a tree that the conservator considers may have
14 heritage significance—the heritage council.
- 15 (3) However, the conservator need not give more than 1 notice to a
16 particular person.
- 17 (4) The conservator may give written notice of the decision to anyone
18 else the conservator considers appropriate.

19 **35 Operation of tree management plan**

- 20 (1) Subject to section 103 (Application for reconsideration of certain
21 decisions), a tree management plan takes effect on the date stated in
22 the notice of decision.
- 23 (2) The date stated in the notice must be at least 14 days after the day
24 the notice is given to—
- 25 (a) the applicant; or
- 26 (b) for a tree management plan proposed on the conservator's own
27 initiative—the people mentioned in section 34 (2).

1 **Part 5** **Tree management precincts**

2 **36** **Criteria for tree management precincts**

3 (1) The Minister may, in writing, determine criteria for declaring an
4 area of land in a built-up urban area to be a tree management
5 precinct.

6 (2) A determination is a notifiable instrument.

7 *Note* A notifiable instrument must be notified under the Legislation Act.

8 **37** **Tree management precinct declaration**

9 (1) The Minister may, in writing, declare a stated area of land in a
10 built-up urban area to be a tree management precinct.

11 (2) The Minister may declare an area of land in a built-up urban area to
12 be a tree management precinct only if satisfied that the area satisfies
13 the criteria determined under section 36.

14 (3) A declaration is a notifiable instrument.

15 *Note* A notifiable instrument must be notified under the Legislation Act.

1 **Part 6 Tree register**

2 **38 Meaning of *registered tree* for pt 6**

3 In this part:

4 *registered tree* does not include a provisionally registered tree.

5 **39 Tree register**

6 (1) The conservator must keep a register of trees (the *tree register*).

7 (2) The tree register must include—

8 (a) for each provisionally registered tree—

9 (i) everything required to be entered in the register under
10 section 46; and

11 (ii) the tree management plan (if any) for the tree; and

12 (b) for each registered tree—

13 (i) everything required to be entered in the register under
14 section 52 (2); and

15 (ii) the tree management plan (if any) for the tree; and

16 (c) for each declared site—

17 (i) a description of the area that is the declared site; and

18 (ii) the date the declaration was made; and

19 (d) the following information about any activity in relation to a
20 provisionally registered or registered tree, or a declared site,
21 for which an approval under division 3.3 is in force:

22 (i) the activity approved;

23 (ii) any conditions to which the approval is subject;

- 1 (iii) the period of the approval; and
- 2 (e) any changes to the information in the register that are
- 3 necessary to keep the register up-to-date.
- 4 (3) The tree register may also include any other information the
- 5 conservator considers relevant.

6 **40 Correction of tree register**

7 The conservator may correct a mistake or omission in the tree

8 register subject to the requirements (if any) prescribed by regulation.

9 **41 Inspection of tree register**

10 (1) A person may, without charge, inspect the tree register during

11 ordinary office hours at the office of the conservator.

12 (2) A person may make a copy of all or part of the tree register.

13 *Note* A fee may be determined under s 107 for s (2).

14 **42 Restricted information in tree register**

15 (1) This section applies if anything required to be entered in the tree

16 register in relation to a tree is restricted information.

17 (2) The conservator must include a statement in the register about the

18 effect of subsections (3) and (4).

19 (3) The restricted information must not be disclosed or copied under

20 section 41 except in accordance with subsection (4).

21 (4) The restricted information may be made available for inspection or

22 copying only if the publication of the information is approved under

23 section 64 (Approval to publish restricted information).

1 **Part 7 Registration of trees**

2 **Division 7.1 Criteria for registration and**
3 **cancellation**

4 **43 Criteria for registration and cancellation of registration**

- 5 (1) The Minister may, in writing, determine—
6 (a) criteria (the *registration criteria*) for the registration of a tree;
7 and
8 (b) criteria (the *cancellation criteria*) for the cancellation of the
9 registration of a tree.

- 10 (2) A determination is a notifiable instrument.

11 *Note* A notifiable instrument must be notified under the Legislation Act.

12 **Division 7.2 Registration process**

13 **44 Nomination for registration**

- 14 (1) Anyone (including the conservator) may nominate a tree in a
15 built-up urban area for registration.

16 *Note 1* If a form is approved under s 108 for a nomination, the form must be
17 used.

18 *Note 2* A fee may be determined under s 107 for a nomination.

- 19 (2) A nomination must be in writing and must be given to the
20 conservator.

21 **45 Decision on provisional registration**

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

1 (2) The conservator may provisionally register a tree only if the
2 conservator considers the tree may satisfy the registration criteria.

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

5 **46 Provisional registration**

6 If the conservator decides to provisionally register a tree, the
7 conservator must provisionally register the tree by entering in the
8 tree register—

- 9 (a) enough information to enable the tree to be identified; and
10 (b) if practicable, the tree's botanical name and any relevant
11 horticultural information; and
12 (c) a description of the protection zone for the tree; and
13 (d) an indication that the registration is provisional; and
14 (e) the period of the provisional registration.

15 **47 Notice of decision on provisional registration**

16 (1) The conservator must give written notice of a decision under
17 section 45 to—

- 18 (a) the person who nominated the tree for registration; and
19 (b) the lessee of, or land management agency for, the land that
20 includes all or part of the tree protection zone for the tree; and
21 (c) if the conservator considers the tree may have heritage
22 significance—the heritage council.

23 (2) However, the conservator need not give more than 1 notice to a
24 particular person.

25 (3) The conservator may give written notice of the decision to anyone
26 else the conservator considers appropriate.

- 1 (4) The conservator must also publish notice of the decision in a daily
2 newspaper circulating generally in the ACT.
- 3 (5) A notice under this section must include—
- 4 (a) enough information to enable the tree to be identified; and
- 5 (b) a statement to the effect that any comments on the proposed
6 registration of the tree may be given to the conservator on or
7 before the closing date stated in the notice.
- 8 (6) The closing date must be at least 21 days after the day the notice is
9 published in a daily newspaper circulating generally in the ACT.
- 10 (7) A notice under this section must not include restricted information.

11 **48 Consultation on proposed registration**

- 12 (1) After making a decision under section 45, the conservator must ask
13 the advisory panel for advice on the proposed registration of the
14 tree.
- 15 (2) If the conservator considers the tree may have heritage significance,
16 the conservator must also ask the heritage council for advice on the
17 proposed registration.

18 **49 Period of provisional registration**

- 19 (1) The provisional registration of a tree is for 1 year beginning on the
20 day it is provisionally registered.
- 21 (2) However, the provisional registration ends if, within the year—
- 22 (a) the tree is registered; or
- 23 (b) the conservator decides not to register the tree and either—
- 24 (i) the appeal period has ended and no appeal has been made;
25 or
- 26 (ii) any appeal has been finally decided and is unsuccessful.

- 1 (3) The conservator may provisionally register a tree more than once.

2 **50 Decision on registration**

- 3 (1) Within 1 year after the day the tree is provisionally registered, the
4 conservator must decide whether to register the tree.
- 5 (2) In deciding whether to register the tree, the conservator must have
6 regard to—
- 7 (a) any advice on the proposed registration given to the
8 conservator by the advisory panel or the heritage council; and
- 9 (b) any comments received on the proposed registration on or
10 before the closing date stated in the notice under section 47.

11 *Note* A decision under this section is a reviewable decision (see s 105).

- 12 (3) The conservator may register the tree only if the conservator
13 considers the tree satisfies the registration criteria.

14 **51 Notice of decision on registration**

- 15 (1) The conservator must give written notice of a decision under
16 section 50 to—
- 17 (a) the person who nominated the tree for registration; and
- 18 (b) the lessee of, or land management agency for, the land where
19 the tree is located; and
- 20 (c) if the tree is on leased land—the lessee of, or land management
21 agency for, land that—
- 22 (i) adjoins the land where the tree is located; and
- 23 (ii) is within 50m of the tree; and
- 24 (d) anyone who gave the conservator—
- 25 (i) written comments about the proposed registration; and

- 1 (ii) contact details for notification of the conservator's
2 decision; and
- 3 (e) if the heritage council gave advice on the proposed
4 registration—the heritage council.
- 5 (2) However, the conservator need not give more than 1 notice to a
6 particular person.
- 7 (3) The conservator may give written notice of the decision to anyone
8 else the conservator considers appropriate.
- 9 (4) If the decision is to register the tree, the conservator must also
10 publish notice of the decision in a daily newspaper circulating
11 generally in the ACT.
- 12 (5) A notice under this section must not include restricted information.

13 **52 Registration**

- 14 (1) This section applies if—
- 15 (a) the conservator decides to register a tree; and
- 16 (b) either—
- 17 (i) the appeal period has ended and no appeal has been made;
18 or
- 19 (ii) any appeal has been finally decided and is unsuccessful.
- 20 (2) The conservator must register the tree by entering in the tree
21 register—
- 22 (a) a photograph or other image of the tree; and
- 23 (b) the tree's location; and
- 24 (c) the tree's botanical name and any relevant horticultural
25 information; and
- 26 (d) a description of the protection zone for the tree; and

- 1 (e) a statement about the tree's significance.

2 **Division 7.3 Cancellation of registration**

3 **53 Proposal for cancellation of registration**

- 4 (1) Anyone (including the conservator) may propose that the
5 registration of a tree be cancelled.

6 *Note 1* If a form is approved under s 108 for a proposal, the form must be used.

7 *Note 2* A fee may be determined under s 107 for a proposal.

- 8 (2) A proposal must be in writing and must be given to the conservator.
9 (3) The conservator may refuse to consider a proposal if satisfied the
10 proposal is frivolous or vexatious.

11 **54 Notice of proposed cancellation of registration**

- 12 (1) Before considering a proposal for the cancellation of the registration
13 of a tree, the conservator must give written notice of the proposed
14 cancellation to—

- 15 (a) the person who proposed the cancellation; and
16 (b) the lessee of, or land management agency for, the land where
17 the tree is located; and
18 (c) if the tree is on leased land—the lessee of, or land management
19 agency for, land that—
20 (i) adjoins the land where the tree is located; and
21 (ii) is within 50m of the tree; and
22 (d) if the tree register indicates that the tree has heritage
23 significance—the heritage council.
24 (2) However, the conservator need not give more than 1 notice to a
25 particular person.

- 1 (3) The conservator may give written notice of the proposed
2 cancellation to anyone else the conservator considers appropriate.
- 3 (4) The conservator must also publish notice of the proposed
4 cancellation in a daily newspaper circulating generally in the ACT.
- 5 (5) A notice under this section must include—
- 6 (a) an indication of whether the conservator considers that the
7 proposed cancellation may satisfy the cancellation criteria; and
- 8 (b) if the conservator considers there may be grounds for making a
9 declaration under section 59 in relation to the cancellation—an
10 indication of that fact; and
- 11 (c) a statement to the effect that any comments about the proposed
12 cancellation may be given to the conservator by the closing
13 date stated in the notice.
- 14 (6) The closing date must be at least 21 days after the day the notice is
15 published in a daily newspaper circulating generally in the ACT.
- 16 (7) A notice under this section must not include restricted information.

17 **55 Consultation on proposed cancellation of registration**

- 18 (1) After giving notice under section 54, the conservator must ask the
19 advisory panel for advice on the proposed cancellation and any
20 proposed declaration under section 59.
- 21 (2) If the tree register indicates that the tree has heritage significance,
22 the conservator must also ask the heritage council for advice on the
23 proposed cancellation.

24 **56 Decision on cancellation of registration etc**

- 25 (1) Within 6 months after the day the conservator publishes the notice
26 mentioned in section 54 (4), the conservator must decide whether to
27 cancel the registration of the tree.

- 1 (2) In deciding whether to cancel the registration of the tree (and
2 whether to make a declaration under section 59 in relation to the
3 cancellation), the conservator must have regard to—
- 4 (a) any advice on the proposed cancellation or declaration given to
5 the conservator by the advisory panel or the heritage council;
6 and
- 7 (b) any comments received on the proposed cancellation or
8 declaration on or before the closing date stated in the notice
9 under section 54.

10 *Note* A decision under this section is a reviewable decision (see s 105).

- 11 (3) The conservator may cancel the registration of the tree only if the
12 conservator considers the cancellation satisfies the cancellation
13 criteria.

14 **57 Notice of decision on cancellation of registration**

- 15 (1) The conservator must give written notice of a decision under
16 section 56 to—
- 17 (a) the person who proposed the cancellation; and
- 18 (b) the lessee of, or land management agency for, the land where
19 the tree is located; and
- 20 (c) if the tree is on leased land—the lessee of, or land management
21 agency for, land that—
- 22 (i) adjoins the land where the tree is located; and
- 23 (ii) is within 50m of the tree; and
- 24 (d) anyone who gave the conservator—
- 25 (i) written comments about the proposed cancellation of
26 registration; and
- 27 (ii) contact details for notification of the conservator's
28 decision; and

- 1 (e) if the heritage council gave advice on the proposed
2 cancellation—the heritage council.
- 3 (2) However, the conservator need not give more than 1 notice to a
4 particular person.
- 5 (3) The conservator may give written notice of the decision to anyone
6 else the conservator considers appropriate.
- 7 (4) If the decision is to cancel the registration, the conservator must also
8 publish notice of the decision in a daily newspaper circulating
9 generally in the ACT.
- 10 (5) A notice under this section must not include restricted information.

11 **58 Cancellation of registration**

- 12 (1) This section applies if—
- 13 (a) the conservator decides to cancel the registration of a tree; and
- 14 (b) either—
- 15 (i) the appeal period has ended and no appeal has been made;
- 16 or
- 17 (ii) any appeal has been finally decided and is unsuccessful.
- 18 (2) The conservator must cancel the registration of the tree by removing
19 the entry about the tree from the tree register.
- 20 (3) However, if the conservator makes a declaration under section 59 in
21 relation to the tree, the entry about the tree must remain in the
22 register while the declaration is in force but must include a
23 statement that the registration of the tree has been cancelled.
- 24 *Note* Details about declared sites must be entered in the register (see s 39).

- 1 **59 Site declarations**
- 2 (1) This section applies if—
- 3 (a) a registered tree is damaged by conduct other than conduct
- 4 mentioned in section 17 (1); and
- 5 (b) the registration of the tree is cancelled; and
- 6 (c) the conservator is satisfied, on reasonable grounds, that the
- 7 cancellation is reasonably attributable to the damage caused by
- 8 the conduct.
- 9 (2) The conservator may, in writing, declare the area that was the
- 10 protection zone for the tree immediately before the registration was
- 11 cancelled to be a declared site.
- 12 (3) A declaration is a notifiable instrument.
- 13 *Note* A notifiable instrument must be notified under the Legislation Act.
- 14 (4) Also—
- 15 (a) the conservator must give written notice of the declaration to—
- 16 (i) the lessee of the land where the tree is located; and
- 17 (ii) the planning and land authority; and
- 18 (b) the conservator may give written notice of the declaration to
- 19 anyone else the conservator considers appropriate.
- 20 (5) Unless sooner revoked, a declaration has effect for 5 years from the
- 21 day it is made.

1 **Part 8** **Restricted information**

2 **60** **Application of pt 8**

3 This part applies in relation to—

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

6 **61** **Restricted non-Aboriginal information**

7 (1) The conservator may, in writing, declare particular information
8 about the location or nature of the tree to be restricted information.

9 (2) The conservator may make the declaration only if satisfied, on
10 reasonable grounds, that public disclosure of the information would
11 be likely to have a substantial adverse effect on the values for which
12 the tree is or may be registered.

13 (3) The conservator must use the conservator's best endeavours to give
14 a copy of the declaration to—

- 15 (a) the person who nominated the tree for registration; and
16 (b) the lessee of, or land management agency for, the land where
17 the tree is located; and
18 (c) the lessee of, or land management agency for, land that—
19 (i) adjoins the land where the tree is located; and
20 (ii) is within 50m of the tree; and
21 (d) if the tree has or may have heritage significance—the heritage
22 council.

-
- 1 **62 Restricted Aboriginal information**
- 2 (1) If the tree is an Aboriginal heritage tree, information about the
- 3 location or nature of the tree is restricted information unless the
- 4 conservator declares in writing that it is not.
- 5 (2) Before making a declaration under subsection (1), the conservator
- 6 must consult, and consider the views of, each representative
- 7 Aboriginal organisation about the information.
- 8 (3) The conservator must use the conservator's best endeavours to give
- 9 a copy of the declaration to—
- 10 (a) the person who nominated the tree for registration; and
- 11 (b) the lessee of, or land management agency for, the land where
- 12 the tree is located; and
- 13 (c) the lessee of, or land management agency for, land that—
- 14 (i) adjoins the land where the tree is located; and
- 15 (ii) is within 50m of the tree; and
- 16 (d) the heritage council.
- 17 (4) In this section:
- 18 *Aboriginal heritage tree*—a tree is an *Aboriginal heritage tree* if it
- 19 is of particular significance to Aboriginal people because of either
- 20 or both of the following:
- 21 (a) Aboriginal tradition;
- 22 (b) the history, including contemporary history, of any Aboriginal
- 23 people of the area where the tree is located.
- 24 *representative Aboriginal organisation* means—
- 25 (a) an organisation declared under the *Heritage Act 2004*,
- 26 section 14 to be a representative Aboriginal organisation for
- 27 that Act; or

1 (b) an organisation prescribed by regulation for this definition.

2 **63 Restricted information not to be published without**
3 **approval**

4 (1) A person commits an offence if the person—

5 (a) publishes restricted information about a tree; and

6 (b) knows that the information is restricted information.

7 Maximum penalty: 50 penalty units.

8 (2) Subsection (1) does not apply if the publication is—

9 (a) in accordance with an approval under section 64; or

10 (b) for the exercise of a function under this Act or another territory
11 law; or

12 (c) by an Aboriginal person to another Aboriginal person and is
13 about an Aboriginal heritage tree.

14 **64 Approval to publish restricted information**

15 (1) The conservator may approve the publication of restricted
16 information about a tree if satisfied that the publication will not have
17 a substantial adverse effect on the values for which the tree is or
18 may be registered.

19 (2) An approval may be given only on application.

20 (3) An approval must be given in writing to the applicant.

21 (4) An application must be in writing and must—

22 (a) identify the restricted information proposed to be published;
23 and

24 (b) state the reason for the publication; and

- 1 (c) state the nature of the publication, including the person, people
2 or kind of people to whom it would be directed.

3 *Note 1* If a form is approved under s 108 for an application, the form must be
4 used.

5 *Note 2* A fee may be determined under s 107 for an application.

6 **65 Limited access to restricted information**

- 7 (1) This section applies if—

8 (a) land is offered for sale; and

9 (b) an interested person for the land applies to the conservator for
10 access to restricted information relevant to the conservation
11 and use of the land.

12 *Note 1* If a form is approved under s 108 for an application, the form must be
13 used.

14 *Note 2* A fee may be determined under s 107 for an application.

15 (2) The conservator must give the applicant the restricted information
16 sought, together with a written explanation about the operation of
17 this part.

- 18 (3) In this section:

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

21 (a) someone considering buying an interest in the land;

22 (b) the person who nominated the tree for registration;

23 (c) the lessee of, or land management agency for, the land where
24 the tree is located;

25 (d) the lessee of, or land management agency for, land that—

26 (i) adjoins the land where the tree is located; and

27 (ii) is within 50m of the tree;

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- 1 (e) if the tree has or may have heritage significance—the heritage
2 council.

- 1 (b) members who between them include people with extensive
2 experience in 2 or more of the fields mentioned in
3 subsection (3).

4 **68 Functions of advisory panel**

5 The advisory panel has the following functions:

- 6 (a) to give any advice requested by the conservator, including
7 advice on the following:
- 8 (i) an application for approval of an activity under
9 division 3.3;
 - 10 (ii) an application for approval of a tree management plan;
 - 11 (iii) the proposed registration of a tree;
 - 12 (iv) the proposed cancellation of registration of a tree;
 - 13 (v) a request for reconsideration of a decision; and
- 14 (b) to give other advice to the conservator on anything relevant to
15 the conservator's functions in relation to tree protection.

16 **69 Ending appointment—advisory panel members**

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

- 19 (a) for misbehaviour or physical or mental incapacity; or
20 (b) for contravening section 70.

21 *Note* A person's appointment also ends if the person resigns (see Legislation
22 Act, s 210).

23 **70 Disclosure of interests—advisory panel members**

24 (1) This section applies if—

- 25 (a) a member of the advisory panel has a direct or indirect
26 financial interest or personal interest in an issue in relation to

- 1 which the advisory panel has been asked to advise the
2 conservator; and
- 3 (b) the interest could conflict with the proper exercise of the
4 advisory panel's functions in relation to the advice.
- 5 (2) As soon as practicable after the member or the advisory panel
6 becomes aware of the relevant facts, the member or advisory panel
7 must disclose the nature of the interest to the conservator.
- 8 (3) The member must not advise, or further advise, the conservator in
9 relation to the issue, unless the conservator directs otherwise.
- 10 (4) Within 14 days after the end of each financial year, the conservator
11 must give the Minister a statement of any disclosure of interest
12 made under this section, and any direction given by the conservator,
13 during the financial year.

14 **71 Advisory panel's procedures etc**

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

17 **Examples of what a regulation may prescribe**

- 18 1 the quorum at meetings of the advisory panel
19 2 who is to preside at meetings of the advisory panel
20 3 how questions are to be resolved at meetings of the advisory panel

21 *Note* An example is part of the Act, is not exhaustive and may extend, but
22 does not limit, the meaning of the provision in which it appears (see
23 Legislation Act, s 126 and s 132).

24 **72 Delegation by advisory panel**

- 25 (1) The advisory panel may delegate any of its functions to a member of
26 the advisory panel subject to the requirements (if any) prescribed by
27 regulation.

28 *Note* For the making of delegations and the exercise of delegated functions,
29 see the Legislation Act, pt 19.4.

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- 1 (2) However, the advisory panel may only delegate the following
2 functions to a member of the panel with extensive experience in
3 arboriculture, forestry or horticulture:
- 4 (a) giving advice to the conservator in relation to an approval of an
5 activity under division 3.3;
- 6 (b) giving advice to the conservator in relation to an approval of a
7 tree management plan.

1 Part 10 Tree protection directions

2 73 Criteria for tree protection directions

3 (1) The conservator may, in writing, determine criteria for the giving of
4 tree protection directions.

5 (2) A determination is a notifiable instrument.

6 *Note* A notifiable instrument must be notified under the Legislation Act.

7 74 Conservator may give tree protection directions

8 (1) The conservator may give the owner or occupier of land where a
9 protected tree is located, or anyone undertaking an activity that may
10 affect a protected tree, a written direction (a *tree protection*
11 *direction*) to do or not do something for the protection of the tree.

12 **Example**

13 to erect a fence around a tree

14 *Note* An example is part of the Act, is not exhaustive and may extend, but
15 does not limit, the meaning of the provision in which it appears (see
16 Legislation Act, s 126 and s 132).

17 (2) A direction may only be given in accordance with the criteria
18 determined under section 73.

19 (3) The direction must state the period for which it is in force.

20 (4) In this section:

21 *protected tree* includes a tree that has been nominated for
22 registration under section 44 if the conservator has not decided
23 whether to provisionally register, or refused to consider the
24 nomination, under section 45.

1 **75 Service of tree protection direction**

2 (1) A tree protection direction may be given to the owner or occupier of
3 land by leaving it, secured conspicuously, on or at the land.

4 (2) A tree protection direction may be given to anyone undertaking an
5 activity that may affect a protected tree by leaving it, secured
6 conspicuously, at the place where the activity is being undertaken.

7 *Note* For how directions may be served generally, see the Legislation Act,
8 pt 19.5.

9 **76 Contravention of tree protection direction—offence**

10 A person commits an offence if the person intentionally contravenes
11 a tree protection direction.

12 Maximum penalty: 50 penalty units.

13 **77 Contravention of tree protection direction—action by**
14 **authorised person**

15 (1) This section applies if a person does not comply with a tree
16 protection direction requiring the person to do something in relation
17 to a tree.

18 (2) An authorised person, or anyone else authorised by the conservator
19 for this section, may enter the land where the tree is located and—

20 (a) do the thing stated in the direction; or

21 (b) do or finish any work stated in the direction.

22 (3) The reasonable cost incurred by the Territory in doing anything
23 under subsection (2) is a debt owing to the Territory by the person to
24 whom the direction was given.

25 (4) The conservator must give the lessee of the land where the tree is
26 located written notice of the action proposed under subsection (2) at
27 least 1 working day before the day the action is to begin.

- 1 (5) The conservator may give written notice of the proposed action to
2 anyone else the conservator considers appropriate.
- 3 (6) The notice must include the following:
- 4 (a) a statement about the operation of this section;
- 5 (b) the purpose and nature of the proposed action;
- 6 (c) the time or times when the action is proposed to be taken;
- 7 (d) a statement about the obligations of the authorised person and
8 the Territory under subsection (8).
- 9 (7) A person may waive the right to all or part of the minimum period
10 of notice under subsection (4).
- 11 (8) Section 100 (Damage etc to be minimised) and section 101
12 (Compensation for exercise of enforcement powers) apply to any
13 action taken under subsection (2) as if—
- 14 (a) it were the exercise of a function under part 12 (Enforcement)
15 by an authorised person or a person assisting an authorised
16 person; and
- 17 (b) any changes prescribed by regulation, and all other necessary
18 changes, were made.

1 **Part 11 Land development applications**

2 **78 Meaning of *development* for pt 11**

3 In this part:

4 ***development*** means a proposed development to which an
5 application under the Land Act, part 6 (Approvals and orders)
6 applies.

7 **79 Simplified outline**

8 The following notes provide a simplified outline of this part and the
9 Land Act, part 6:

10 *Note 1 Conservator to be given copy of development application*

11 The planning and land authority must give the conservator a copy of
12 each development application that relates to land that includes the tree
13 protection zone for a protected tree or a declared site (including any
14 proposed tree management plan with the application) (see Land Act,
15 s 229).

16 *Note 2 Conservator to give advice on application*

17 The conservator must provide advice to the planning and land authority
18 in relation to tree protection and the development (see s 80 and s 81).

19 *Note 3 Conservator's advice to be considered*

20 The conservator's advice must be considered by the planning and land
21 authority (or the Minister) in approving or refusing to approve a
22 development application (see Land Act, s 231).

23 *Note 4 Approvals and their effect*

24 A development approval may be given that is inconsistent with the
25 advice of the conservator in relation to a regulated tree in the
26 circumstances described in the Land Act, s 231.

27 A person acting in relation to a regulated tree in accordance with a
28 development approval does not commit an offence under
29 s 15 (Damaging protected trees) or s 16 (Doing prohibited groundwork)

1 (see s 17 (1) (d)). However, the conservator's approval under this Act is
2 required for any activity that may damage a registered tree, or may be
3 prohibited groundwork in the protection zone of a registered tree or a
4 declared site.

5 **80 Advice about tree protection on land subject to**
6 **development**

- 7 (1) This section applies if the conservator is satisfied, on reasonable
8 grounds, that a development involves, or is likely to involve, an
9 activity that would or may—
10 (a) damage a protected tree; or
11 (b) be prohibited groundwork in—
12 (i) the protection zone for a protected tree; or
13 (ii) a declared site.
14 (2) The conservator may give the planning and land authority written
15 advice in accordance with section 81 about its decision.
16 (3) However, if the planning and land authority gives the conservator
17 notice of a development application under the Land Act, section 229
18 the conservator must, as soon as practicable but within 30 working
19 days after the day it is given the notice—
20 (a) consider the application; and
21 (b) give the authority written advice in accordance with section 81.

22 **81 Requirements for conservator's advice about tree**
23 **protection**

- 24 (1) The conservator's advice under section 80 in relation to a
25 development must include advice about tree protection requirements
26 for any protected trees on the land subject to the development.
27 (2) Without limiting subsection (1), the advice may—
28 (a) include information about the trees on the land; and

Part 11 Land development applications

Section 81

- 1 (b) set out proposed conditions on any approval of the
2 development.

1 **Part 12** **Enforcement**

2 **Division 12.1** **General**

3 **82** **Definitions for pt 12**

4 In this part:

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

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

10 ***occupier***, of premises, includes—

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

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

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

1 **Division 12.2 Authorised people**

2 **83 Appointment of authorised people**

3 The chief executive may appoint a public servant to be an authorised
4 person for this Act.

5 *Note 1* For the making of appointments (including acting appointments), see
6 the Legislation Act, pt 19.3.

7 *Note 2* In particular, a person may be appointed for a particular provision of a
8 law (see Legislation Act, s 7 (3)) and an appointment may be made by
9 naming a person or nominating the occupant of a position (see s 207).

10 **84 Identity cards**

11 (1) The chief executive must give an authorised person an identity card
12 stating the person's name and that the person is an authorised
13 person.

14 (2) The identity card must show—

15 (a) a recent photograph of the person; and

16 (b) the card's date of issue and expiry; and

17 (c) anything else prescribed by regulation.

18 (3) A person commits an offence if—

19 (a) the person stops being an authorised person; and

20 (b) the person does not return the person's identity card to the
21 chief executive as soon as practicable, but no later than 7 days
22 after the day the person stops being an authorised person.

23 Maximum penalty: 1 penalty unit.

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

1 **Division 12.3 Powers of authorised people**

2 **85 Power to enter premises**

- 3 (1) For this Act, an authorised person may—
- 4 (a) at any reasonable time, enter premises to—
- 5 (i) inspect a tree, or the area near a tree, that is registered or
- 6 proposed to be registered; or
- 7 (ii) give a tree protection direction to the owner or occupier;
- 8 or
- 9 (b) at any reasonable time, enter premises that the public is entitled
- 10 to use or that are open to the public (whether or not on
- 11 payment of money); or
- 12 (c) at any time, enter premises with the occupier's consent; or
- 13 (d) enter premises in accordance with a search warrant.
- 14 (2) However, subsection (1) (a) or (b) does not authorise entry into a
- 15 part of premises that is being used only for residential purposes.
- 16 (3) An authorised person may, without the consent of the occupier of
- 17 premises, enter land around the premises to ask for consent to enter
- 18 the premises.
- 19 (4) To remove any doubt, an authorised person may enter premises
- 20 under subsection (1) without payment of an entry fee or other
- 21 charge.

22 **86 Production of identity card**

23 An authorised person must not remain at premises entered under this

24 part if the authorised person does not produce his or her identity

25 card when asked by the occupier.

- 1 **87 Consent to entry**
- 2 (1) When seeking the consent of an occupier of premises to enter
- 3 premises under section 85 (1) (c), an authorised person must—
- 4 (a) produce his or her identity card; and
- 5 (b) tell the occupier—
- 6 (i) the purpose of the entry; and
- 7 (ii) that anything found and seized under this part may be
- 8 used in evidence in court; and
- 9 (iii) that consent may be refused.
- 10 (2) If the occupier consents, the authorised person must ask the occupier
- 11 to sign a written acknowledgment (an *acknowledgment of*
- 12 *consent*)—
- 13 (a) that the occupier was told—
- 14 (i) the purpose of the entry; and
- 15 (ii) that anything found and seized under this part may be
- 16 used in evidence in court; and
- 17 (iii) that consent may be refused; and
- 18 (b) that the occupier consented to the entry; and
- 19 (c) stating the time and date when consent was given.
- 20 (3) If the occupier signs an acknowledgment of consent, the authorised
- 21 person must immediately give a copy to the occupier.
- 22 (4) A court must find that the occupier did not consent to entry to the
- 23 premises by the authorised person under this part if—
- 24 (a) the question arises in a proceeding in the court whether the
- 25 occupier consented to the entry; and
- 26 (b) an acknowledgment of consent for the entry is not produced in
- 27 evidence; and

1 (c) it is not proved that the occupier consented to the entry.

2 **88 General powers on entry to premises**

3 (1) An authorised person who enters premises under this part may, for
4 this Act, do 1 or more of the following in relation to the premises or
5 anything at the premises:

6 (a) inspect or examine;

7 (b) take measurements or conduct tests;

8 (c) take samples;

9 (d) take photographs, films, or audio, video or other recordings;

10 (e) require the occupier, or anyone at the premises, to give the
11 authorised person reasonable help to exercise a power under
12 this part.

13 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
14 privilege against selfincrimination and client legal privilege.

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

17 Maximum penalty: 50 penalty units.

18 **89 Power to require name and address**

19 (1) An authorised person may require a person to state the person's
20 name and home address if the authorised person believes, on
21 reasonable grounds, that the person is committing or has just
22 committed an offence against this Act.

23 *Note* A reference to an Act includes a reference to the statutory instruments
24 made or in force under the Act, including any regulation (see
25 Legislation Act, s 104).

26 (2) The authorised person must tell the person the reason for the
27 requirement and, as soon as practicable, record the reason.

- 1 (3) The person may ask the authorised person to produce his or her
2 identity card for inspection by the person.
- 3 (4) A person must comply with a requirement made of the person under
4 subsection (1) if the authorised person—
- 5 (a) tells the person the reason for the requirement; and
6 (b) complies with any request made by the person under
7 subsection (3).
- 8 Maximum penalty: 10 penalty units.
- 9 (5) An offence against this section is a strict liability offence.
- 10 (6) In this section:
- 11 *home address*, of a person, means the address of the place where the
12 person usually lives.

13 **90 Power to seize things**

- 14 (1) An authorised person who enters premises under this part with the
15 occupier's consent may seize anything at the premises if—
- 16 (a) the authorised person is satisfied, on reasonable grounds, that
17 the thing is connected with an offence against this Act; and
- 18 (b) seizure of the thing is consistent with the purpose of the entry
19 told to the occupier when seeking the occupier's consent.
- 20 (2) An authorised person who enters premises under a warrant under
21 this part may seize anything at the premises that the authorised
22 person is authorised to seize under the warrant.
- 23 (3) An authorised person who enters premises under this part (whether
24 with the occupier's consent, under a warrant or otherwise) may seize
25 anything at the premises if satisfied, on reasonable grounds, that—
- 26 (a) the thing is connected with an offence against this Act; and
27 (b) the seizure is necessary to prevent the thing from being—

- 1 (i) concealed, lost or destroyed; or
2 (ii) used to commit, continue or repeat the offence.
- 3 (4) Having seized a thing, an authorised person may—
4 (a) remove the thing from the premises where it was seized (the
5 *place of seizure*) to another place; or
6 (b) leave the thing at the place of seizure but restrict access to it.
- 7 (5) A person commits an offence if—
8 (a) the person interferes with a seized thing, or anything
9 containing a seized thing, to which access has been restricted
10 under subsection (4); and
11 (b) the person does not have an authorised person's approval to
12 interfere with the thing.
- 13 Maximum penalty: 50 penalty units.
- 14 (6) An offence against this section is a strict liability offence.

15 **Division 12.4 Search warrants**

16 **91 Warrants generally**

- 17 (1) An authorised person may apply to a magistrate for a warrant to
18 enter premises.
- 19 (2) The application must be sworn and state the grounds on which the
20 warrant is sought.
- 21 (3) The magistrate may refuse to consider the application until the
22 authorised person gives the magistrate all the information the
23 magistrate requires about the application in the way the magistrate
24 requires.
- 25 (4) The magistrate may issue a warrant only if satisfied there are
26 reasonable grounds for suspecting—

- 1 (a) there is a particular thing or activity connected with an offence
2 against this Act; and
- 3 (b) the thing or activity—
- 4 (i) is, or is being engaged in, at the premises; or
- 5 (ii) may be, or may be engaged in, at the premises within the
6 next 14 days.
- 7 (5) The warrant must state—
- 8 (a) that an authorised person may, with any necessary assistance
9 and force, enter the premises and exercise the authorised
10 person's powers under this part; and
- 11 (b) the offence for which the warrant is issued; and
- 12 (c) the things that may be seized under the warrant; and
- 13 (d) the hours when the premises may be entered; and
- 14 (e) the date, within 14 days after the day of the warrant's issue, the
15 warrant ends.

16 **92 Warrants—application made other than in person**

- 17 (1) An authorised person may apply for a warrant by phone, fax, radio
18 or other form of communication if the authorised person considers it
19 necessary because of—
- 20 (a) urgent circumstances; or
- 21 (b) other special circumstances.
- 22 (2) Before applying for the warrant, the authorised person must prepare
23 an application stating the grounds on which the warrant is sought.
- 24 (3) The authorised person may apply for the warrant before the
25 application is sworn.
- 26 (4) After issuing the warrant, the magistrate must immediately fax a
27 copy to the authorised person if it is practicable to do so.

- 1 (5) If it is not practicable to fax a copy to the authorised person—
2 (a) the magistrate must—
3 (i) tell the authorised person the terms of the warrant; and
4 (ii) tell the authorised person the date and time the warrant
5 was issued; and
6 (b) the authorised person must complete a form of warrant (the
7 *warrant form*) and write on it—
8 (i) the magistrate's name; and
9 (ii) the date and time the magistrate issued the warrant; and
10 (iii) the warrant's terms.
11 (6) The faxed copy of the warrant, or the warrant form properly
12 completed by the authorised person, authorises the entry and the
13 exercise of the authorised person's powers under this part.
14 (7) The authorised person must, at the first reasonable opportunity, send
15 to the magistrate—
16 (a) the sworn application; and
17 (b) if the authorised person completed a warrant form—the
18 completed warrant form.
19 (8) On receiving the documents, the magistrate must attach them to the
20 warrant.
21 (9) A court must find that a power exercised by the authorised person
22 was not authorised by a warrant under this section if—
23 (a) the question arises in a proceeding in the court whether the
24 exercise of power was authorised by a warrant; and
25 (b) the warrant is not produced in evidence; and
26 (c) it is not proved that the exercise of power was authorised by a
27 warrant under this section.
-

- 1 **93 Search warrants—announcement before entry**
- 2 (1) An authorised person must, before anyone enters premises under a
3 search warrant—
- 4 (a) announce that the authorised person is authorised to enter the
5 premises; and
- 6 (b) give anyone at the premises an opportunity to allow entry to
7 the premises; and
- 8 (c) if the occupier of the premises, or someone else who
9 apparently represents the occupier, is present at the premises—
10 identify himself or herself to the person.
- 11 (2) The authorised person is not required to comply with subsection (1)
12 if the authorised person believes, on reasonable grounds, that
13 immediate entry to the premises is required to ensure—
- 14 (a) the safety of anyone (including the authorised person or any
15 person assisting); or
- 16 (b) that the effective execution of the warrant is not frustrated.
- 17 **94 Details of search warrant to be given to occupier etc**
- 18 If the occupier of premises, or someone else who apparently
19 represents the occupier, is present at the premises while a search
20 warrant is being executed, the authorised person or a person
21 assisting must make available to the person—
- 22 (a) a copy of the warrant; and
- 23 (b) a document setting out the rights and obligations of the person.
- 24 **95 Occupier entitled to be present during search etc**
- 25 (1) If the occupier of premises, or someone else who apparently
26 represents the occupier, is present at the premises while a search
27 warrant is being executed, the person is entitled to observe the
28 search being conducted.

- 1 (2) However, the person is not entitled to observe the search if—
2 (a) to do so would impede the search; or
3 (b) the person is under arrest, and allowing the person to observe
4 the search being conducted would interfere with the objectives
5 of the search.
6 (3) This section does not prevent 2 or more areas of the premises being
7 searched at the same time.

8 **Division 12.5 Return and forfeiture of things seized**

9 **96 Receipt for things seized**

- 10 (1) As soon as practicable after an authorised person seizes a thing
11 under this part, the authorised person must give a receipt for it to the
12 person from whom it was seized.
13 (2) If, for any reason, it is not practicable to comply with subsection (1),
14 the authorised person must leave the receipt, secured conspicuously,
15 at the place of seizure under section 90 (Power to seize things).
16 (3) A receipt under this section must include the following:
17 (a) a description of the thing seized;
18 (b) an explanation of why the thing was seized;
19 (c) the authorised person's name, and how to contact the
20 authorised person;
21 (d) if the thing is moved from the premises where it is seized—
22 where the thing is to be taken.

23 **97 Moving things to another place for examination or** 24 **processing under search warrant**

- 25 (1) A thing found at premises entered under a search warrant may be
26 moved to another place for examination or processing to decide
27 whether it may be seized under the warrant if—

- 1 (a) both of the following apply:
- 2 (i) there are reasonable grounds for believing that the thing is
- 3 or contains something to which the warrant relates;
- 4 (ii) it is significantly more practicable to do so having regard
- 5 to the timeliness and cost of examining or processing the
- 6 thing at another place and the availability of expert
- 7 assistance; or
- 8 (b) the occupier of the premises agrees in writing.
- 9 (2) The thing may be moved to another place for examination or
- 10 processing for no longer than 72 hours.
- 11 (3) An authorised person may apply to a magistrate for an extension of
- 12 time if the authorised person believes, on reasonable grounds, that
- 13 the thing cannot be examined or processed within 72 hours.
- 14 (4) The authorised person must give notice of the application to the
- 15 occupier of the premises, and the occupier is entitled to be heard on
- 16 the application.
- 17 (5) If a thing is moved to another place under this section, the
- 18 authorised person must, if practicable—
- 19 (a) tell the occupier of the premises the address of the place where,
- 20 and time when, the examination or processing will be carried
- 21 out; and
- 22 (b) allow the occupier or the occupier’s representative to be
- 23 present during the examination or processing.
- 24 (6) The provisions of this part relating to the issue of search warrants
- 25 apply, with any necessary changes, to the giving of an extension
- 26 under this section.

27 **98 Access to things seized**

28 A person who would, apart from the seizure, be entitled to inspect a

29 thing seized under this part may—

- 1 (a) inspect it; and
2 (b) if it is a document—take extracts from it or make copies of it.

3 **99 Return of things seized**

- 4 (1) A thing seized under this part must be returned to its owner, or
5 reasonable compensation must be paid by the Territory to the owner
6 for the loss of the thing if—
- 7 (a) an infringement notice for an offence relating to the thing is
8 not served on the owner within 1 year after the day of the
9 seizure and—
- 10 (i) a prosecution for an offence relating to the thing is not
11 begun within the 1-year period; or
- 12 (ii) a prosecution for an offence relating to the thing is begun
13 within the 1-year period but the court does not find the
14 offence proved; or
- 15 (b) an infringement notice for an offence relating to the thing is
16 served on the owner within 1 year after the day of the seizure,
17 the infringement notice is withdrawn and—
- 18 (i) a prosecution for an offence relating to the thing is not
19 begun within the 1-year period; or
- 20 (ii) a prosecution for an offence relating to the thing is so
21 begun but the court does not find the offence proved; or
- 22 (c) an infringement notice for an offence relating to the thing is
23 served on the owner and not withdrawn within 1 year after the
24 day of the seizure, liability for the offence is disputed in
25 accordance with the *Magistrates Court Act 1930*, section 132
26 (Disputing liability for infringement notice offence) and—
- 27 (i) an information is not laid in the Magistrates Court against
28 the person for the offence within 60 days after the day

- 1 notice is given under section 132 that liability is disputed;
2 or
- 3 (ii) an information is laid in the Magistrates Court against the
4 person for the offence within the 60-day period, but the
5 Magistrates Court does not find the offence proved.
- 6 (2) If anything seized under this part is not required to be returned or
7 reasonable compensation is not required to be paid under
8 subsection (1), the thing—
- 9 (a) is forfeited to the Territory; and
- 10 (b) may be sold, destroyed or otherwise disposed of as the chief
11 executive directs.

12 **Division 12.6 Miscellaneous**

13 **100 Damage etc to be minimised**

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

26 **101 Compensation for exercise of enforcement powers**

- 27 (1) A person may claim compensation from the Territory if the person
28 suffers loss or expense because of the exercise, or purported

- 1 exercise, of a function under this part by an authorised person or a
2 person assisting an authorised person.
- 3 (2) Compensation may be claimed and ordered in a proceeding for—
- 4 (a) compensation brought in a court of competent jurisdiction; or
- 5 (b) an offence against this Act brought against the person making
6 the claim for compensation.
- 7 (3) A court may order the payment of reasonable compensation for the
8 loss or expense only if it is satisfied it is just to make the order in the
9 circumstances of the particular case.
- 10 (4) A regulation may prescribe matters that may, must or must not be
11 taken into account by the court in considering whether it is just to
12 make the order.

1 **Part 13 Review of decisions**

2 **102 Notice of decisions that can be reconsidered or reviewed**

3 (1) If the conservator makes a decision that can be reconsidered or
4 reviewed under this part, the conservator must give written notice of
5 the decision to each person entitled to apply for reconsideration or
6 review of the decision.

7 (2) The notice must comply with the requirements of the code of
8 practice in force under the *Administrative Appeals Tribunal*
9 *Act 1989*, section 25B (1).

10 (3) In particular, the notice must tell the person—

11 (a) whether the person has the right to apply for reconsideration of
12 the decision or the right to apply for review of the decision by
13 the administrative appeals tribunal, and how the application
14 must be made; and

15 (b) if the person has the right to apply for reconsideration of the
16 decision—that the person has the right to apply to the
17 administrative appeals tribunal for review of the decision on
18 the reconsideration; and

19 (c) about the options available under other territory laws to have
20 the decision reviewed by a court or the ombudsman.

21 **103 Application for reconsideration of certain decisions**

22 (1) Application may be made to the conservator for reconsideration of
23 any of the following decisions of the conservator:

24 (a) to approve, or refuse to approve, an activity under section 23;

25 (b) to cancel the approval of an activity under section 26;

- 1 (c) to approve, or refuse to approve, a tree management plan under
2 section 33.
- 3 (2) The application may be made by anyone to whom the conservator
4 gave notice of the decision to be reconsidered.
- 5 (3) The application must be made within 14 days after the day the
6 notice of decision was given to the person.
- 7 (4) The application must be in writing and must set out the grounds on
8 which reconsideration of the decision is sought.
- 9 (5) If the application is made in accordance with this section, the
10 making of the application automatically stays the operation of the
11 decision until the application is finally dealt with.

12 **104 Reconsideration of decisions**

- 13 (1) As soon as practicable after receiving an application for
14 reconsideration of a decision (the *first decision*), the conservator
15 must, in writing, ask the advisory panel for advice on the
16 application.
- 17 (2) Within 30 days after the day the advisory panel receives the
18 conservator's request, the advisory panel must give the conservator
19 its advice.
- 20 (3) Within 30 days after the day the conservator receives the advisory
21 panel's advice, the conservator must—
- 22 (a) reconsider the first decision having regard to the advisory
23 panel's advice; and
- 24 (b) confirm, vary or revoke the first decision.
- 25 (4) The conservator must give written notice of the decision on the
26 reconsideration to everyone to whom the conservator gave notice of
27 the first decision.

- 1 **105 Review of decisions by AAT**
- 2 (1) Application may be made to the administrative appeals tribunal for
- 3 review of the following decisions (a *reviewable decision*) of the
- 4 conservator:
- 5 (a) to approve, or refuse to approve, the registration of a tree under
- 6 section 50;
- 7 (b) to cancel, or refuse to cancel, the registration of a tree under
- 8 section 56;
- 9 (c) to make a declaration under section 59;
- 10 (d) to approve, or refuse to approve, the publication of restricted
- 11 information under section 64;
- 12 (e) to give a tree protection direction under section 74;
- 13 (f) to confirm, vary or revoke a decision reconsidered under
- 14 section 104.
- 15 (2) The application may be made by anyone to whom the conservator
- 16 gave notice of the reviewable decision.
- 17 (3) The application must be made within 21 days after the day the
- 18 person was given notice of the reviewable decision.

1 **Part 14** **Miscellaneous**

2 **106** **Criminal liability of executive officers**

- 3 (1) An executive officer of a corporation commits an offence if—
- 4 (a) the corporation commits an offence (a *relevant offence*) by
- 5 contravening any of the following provisions of this Act:
- 6 (i) section 15 (Damaging protected trees);
- 7 (ii) section 16 (Doing prohibited groundwork);
- 8 (iii) section 18 (Contravening tree protection conditions of
- 9 development approval);
- 10 (iv) section 28 (Contravening conditions of approval);
- 11 (v) section 76 (Contravention of tree protection direction—
- 12 action by authorised person); and
- 13 (b) the officer was reckless about whether the contravention would
- 14 happen; and
- 15 (c) the officer was in a position to influence the conduct of the
- 16 corporation in relation to the contravention; and
- 17 (d) the officer failed to take all reasonable steps to prevent the
- 18 contravention.

19 Maximum penalty: The maximum penalty that may be imposed for

20 the commission of the relevant offence by an individual.

- 21 (2) This section applies whether or not the corporation is prosecuted for,
- 22 or convicted of, the relevant offence.

- 1 (3) In deciding whether the executive officer took (or failed to take)
2 reasonable steps to prevent the contravention, a court must consider
3 the following:
- 4 (a) any action the officer took directed towards ensuring the
5 following (to the extent that the action is relevant to the act or
6 omission):
- 7 (i) that the corporation arranges regular professional
8 assessments of the corporation's compliance with the
9 contravened provision;
- 10 (ii) that the corporation implements any appropriate
11 recommendation arising from such an assessment;
- 12 (iii) that the corporation's employees, agents and contractors
13 have a reasonable knowledge and understanding of the
14 requirement to comply with the contravened provision;
- 15 (b) any action the officer took when the officer became aware that
16 the contravention was, or might be, about to happen.
- 17 (4) Subsection (3) does not limit the matters to which the court may
18 have regard.
- 19 (5) This section does not apply if the corporation would have a defence
20 to a prosecution for the relevant offence.
- 21 (6) In this section:
- 22 *executive officer*, of a corporation, means a person, by whatever
23 name called and whether or not the person is a director of the
24 corporation, who is concerned with, or takes part in, the
25 corporation's management.

26 **107 Determination of fees**

- 27 (1) The Minister may, in writing, determine fees for this Act.
- 28 *Note* The Legislation Act contains provisions about the making of
29 determinations and regulations relating to fees (see pt 6.3).

1 (2) A determination is a disallowable instrument.

2 *Note* A disallowable instrument must be notified, and presented to the
3 Legislative Assembly, under the Legislation Act.

4 **108 Approved forms**

5 (1) The Minister may, in writing, approve forms for this Act.

6 (2) If the Minister approves a form for a particular purpose, the
7 approved form must be used for that purpose.

8 *Note* For other provisions about forms, see the Legislation Act, s 255.

9 (3) An approved form is a notifiable instrument.

10 *Note* A notifiable instrument must be notified under the Legislation Act.

11 **109 Delegation of conservator's functions**

12 (1) The conservator may delegate the conservator's functions under this
13 Act to—

14 (a) a public employee; or

15 (b) an authorised person; or

16 (c) a person prescribed by regulation.

17 *Note* For the making of delegations and the exercise of delegated functions,
18 see the Legislation Act, pt 19.4.

19 (2) However, the conservator must not delegate the function of—

20 (a) deciding under section 50 whether to register a tree; or

21 (b) deciding under section 56 whether to cancel the registration of
22 a tree; or

23 (c) reconsidering a decision under section 104.

1 **110 Incorporation of documents**

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

5 **111 Inspection of incorporated documents**

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

8 *Note* For the meaning of *incorporated document*, see the dictionary.

9 (2) The chief executive must ensure that the document, amendment or
10 replacement is made available for inspection free of charge to the
11 public on business days at reasonable times at the office of an
12 administrative unit administered by the chief executive.

13 (3) In this section:

14 *amendment*, of an incorporated document—see section 112 (6).

15 **112 Notification of certain incorporated documents**

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

18 **Example of replacement document**

19 a new edition of the incorporated document

20 *Note* An example is part of the Act, is not exhaustive and may extend, but
21 does not limit, the meaning of the provision in which it appears (see
22 Legislation Act, s 126 and s 132).

23 (2) The chief executive may prepare a written notice (an *incorporated*
24 *document notice*) for the incorporated document, amendment or
25 replacement that contains the following information:

26 (a) for an incorporated document—details of the document,
27 including its title, author and date of publication;

- 1 (b) for a replacement of an incorporated document—details of the
2 replacement, including its title, author and date of publication;
- 3 (c) for an amendment of an incorporated document—the date of
4 publication of the amendment (or of the document as amended)
5 and a brief summary of the effect of the amendment;
- 6 (d) for an incorporated document or any amendment or
7 replacement—
- 8 (i) a date of effect (no earlier than the day after the day of
9 notification of the notice); and
- 10 (ii) details of how access to inspect the document,
11 amendment or replacement may be obtained under
12 section 111 (Inspection of incorporated documents); and
- 13 (iii) details of how copies may be obtained, including an
14 indication of whether there is a cost involved.
- 15 (3) An incorporated document notice is a notifiable instrument.
- 16 *Note* A notifiable instrument must be notified under the Legislation Act.
- 17 (4) An incorporated document, and any amendment or replacement of
18 an incorporated document, has no effect under this Act unless—
- 19 (a) an incorporated document notice is notified in relation to the
20 document, amendment or replacement; or
- 21 (b) the document, amendment or replacement is notified under the
22 Legislation Act, section 47 (6).
- 23 (5) The Legislation Act, section 47 (7) does not apply in relation to
24 incorporated documents.
- 25 (6) In this section:
- 26 ***amendment***, of an incorporated document, includes an amendment
27 of a replacement for the incorporated document.

- 1 **replacement**, for an incorporated document, means—
- 2 (a) a document that replaces the incorporated document; or
- 3 (b) a document (an **initial replacement**) that replaces a document
- 4 mentioned in paragraph (a); or
- 5 (c) a document (a **further replacement**) that replaces an initial
- 6 replacement or any further replacement.

7 **113 Regulation-making power**

- 8 (1) The Executive may make regulations for this Act.

9 *Note* A regulation must be notified, and presented to the Legislative

10 Assembly, under the Legislation Act.

- 11 (2) A regulation may create offences and fix maximum penalties of not
- 12 more than 10 penalty units for the offences.

1 Part 15 Transitional

2 114 Definitions for pt 15

3 In this part:

4 *commencement day* means the day this Act commences.

5 *old Act* means the *Tree Protection (Interim Scheme) Act 2001*.

6 115 Legislation repealed

7 (1) The *Tree Protection (Interim Scheme) Act 2001* A2001-20 is
8 repealed.

9 (2) The following instruments are repealed:

- 10 • *Determination of criteria for approval to undertake a tree*
11 *damaging activity* DI2001-60
- 12 • *Tree Protection (Interim Scheme) Determination of Criteria*
13 *2002* DI2003-5
- 14 • *Tree Protection (Interim Scheme) Appointment 2004 (No 1)*
15 *DI2004-47*
- 16 • *Tree Protection (Interim Scheme) Appointment 2004 (No 2)*
17 *DI2004-158*.

18 116 Heritage trees

19 (1) An individual tree that is included in the heritage register
20 immediately before the commencement day is taken to be registered
21 under this Act.

22 (2) As soon as practicable, the conservator must enter in the tree
23 register the details mentioned in section 52 (2) about the tree.

24 (3) The heritage council—

- 25 (a) must remove the tree's registration details from the heritage
26 register; and

1 (b) may make any consequential amendment of the heritage
2 register it considers appropriate.

3 **117 Interim tree management precincts**

4 Each district under the *Districts Act 2002* is taken to be a tree
5 management precinct on the commencement day.

6 **118 Approved activities**

7 (1) This section applies to an approval in force under the old Act,
8 section 15 immediately before the commencement day.

9 (2) The approval—

10 (a) continues in force as if it had been given under this Act,
11 section 23; and

12 (b) may be extended or cancelled by the conservator under this
13 Act.

14 **119 Transitional regulations**

15 (1) A regulation may prescribe transitional matters necessary or
16 convenient to be prescribed because of the enactment of this Act.

17 (2) A regulation may modify this part (including its operation in
18 relation to another territory law) to make provision in relation to
19 anything that, in the Executive's opinion, is not, or not adequately or
20 appropriately, dealt with in this part.

21 (3) A regulation under subsection (2) has effect despite anything
22 elsewhere in this Act or another territory law.

23 **120 Legislation amended—sch 1**

24 This Act amends the legislation mentioned in schedule 1.

25 **121 Expiry of pt 15**

26 This part expires 2 years after the day it commences.

1 **Schedule 1** **Consequential amendments**

2 (see s 120)

3 **Part 1.1** **Administrative Appeals Tribunal**
4 **Act 1989**

5 **[1.1] Section 49A**

6 *omit*

- 7 • *Tree Protection (Interim Scheme) Act 2001*

8 *substitute*

- 9 • *Tree Protection Act 2005*

10 **[1.2] Section 49B**

11 *omit*

- 12 • *Tree Protection (Interim Scheme) Act 2001*

13 *substitute*

- 14 • *Tree Protection Act 2005*

15 **Part 1.2** **Heritage Act 2004**

16 **[1.3] New section 3A**

17 *insert*

18 **3A Individual heritage trees**

- 19 (1) The council must not register an individual tree under this Act.
20 (2) Subsection (1) does not prevent the registration of a place where a
21 tree or trees form part of the heritage significance of the place.

22 *Note* The *Tree Protection Act 2005* includes provision for the protection of
23 trees of heritage significance. For trees of heritage significance, it

1 provides for the heritage council to be notified about approved
2 activities, tree management plans and provisional registration under that
3 Act. It also provides for the heritage council's advice to be taken into
4 account in deciding whether to register a tree of heritage significance
5 under that Act.

6 Part 1.3 Land (Planning and 7 Environment) Act 1991

8 [1.4] Section 222, new definitions

9 *insert*

10 *damage* a protected tree—see the *Tree Protection Act 2005*,
11 section 12

12 *declared site*—see the *Tree Protection Act 2005*, dictionary.

13 *prohibited groundwork*—see the *Tree Protection Act 2005*,
14 section 14.

15 *protected tree*—see the *Tree Protection Act 2005*, section 8.

16 *protection zone*, for a protected tree—see the *Tree Protection*
17 *Act 2005*, section 11.

18 [1.5] New section 227 (1) (da) and (db)

19 *insert*

20 (da) each notice of a development application given to the
21 conservator under section 229 (4) (b); and

22 (db) each advice given to the planning and land authority by the
23 conservator under the *Tree Protection Act 2005*, section 80
24 (Advice about tree protection on land subject to development);
25 and

1 **[1.6] Section 227 (1)**

2 *renumber paragraphs when Act next republished under*
3 *Legislation Act*

4 **[1.7] Section 229 (4) (b)**

5 *substitute*

6 (b) must give the conservator—

- 7 (i) a copy of each application that relates to land that
8 includes all or part of the tree protection zone for a
9 protected tree or a declared site; and
10 (ii) if a proposed tree management plan is included with the
11 application—a copy of the proposed plan; and
12 (iii) a statement that the application is referred to the
13 conservator under this paragraph; and

14 **[1.8] New section 229A (2A)**

15 *insert*

16 (2A) The planning and land authority must give a copy of the direction to
17 the conservator if the application relates to land that includes all or
18 part of the tree protection zone for a protected tree or a declared site.

19 **[1.9] Section 229A (3) (a)**

20 *substitute*

- 21 (a) the information and documents received by the authority in
22 relation to the application, including—
23 (i) any advice under the *Heritage Act 2004*, section 60
24 (Advice about effect of development on heritage
25 significance); and
26 (ii) any advice under the *Tree Protection Act 2005*,
27 section 80 (Advice about tree protection on land subject
28 to development); and

1 **[1.10] Section 229A**
2 *renumber subsections when Act next republished under Legislation*
3 *Act*

4 **[1.11] New section 229B (6) (ba)**
5 *insert*
6 (ba) for an application mentioned in section 229A (2A)—ensure
7 that the Minister has the advice of the conservator under the
8 *Tree Protection Act 2005*, section 80 (Advice about tree
9 protection on land subject to development); and

10 **[1.12] Section 229B (6)**
11 *renumber paragraphs when Act next republished under*
12 *Legislation Act*

13 **[1.13] New section 231 (1) (ea)**
14 *insert*
15 (ea) any advice given to the authority by the conservator under the
16 *Tree Protection Act 2005*, section 80 (Advice about tree
17 protection on land subject to development) within 30 working
18 days after the day the conservator is given notice of the
19 application by the authority;

20 **[1.14] New section 231 (3A) to (3C)**
21 *insert*
22 (3A) The relevant authority may make a decision under section 230 that
23 is inconsistent with advice of the conservator under the *Tree*
24 *Protection Act 2005*, section 80 in relation to a regulated tree only if
25 the authority is satisfied, having regard to the broader strategic
26 objectives of the territory plan, that all reasonable development
27 options and design solutions have been considered to avoid or
28 minimise the need to damage the tree or undertake prohibited
29 groundwork.

1 (3B) A decision mentioned in subsection (3A) may not be made by a
2 person acting as delegate of the planning and land authority.

3 (3C) If the relevant authority makes a decision mentioned in
4 subsection (3A), the relevant authority must give the conservator
5 written notice of the decision.

6 **[1.15] Section 231**

7 *renumber subsections and paragraphs when Act next republished*
8 *under Legislation Act*

9 **[1.16] Section 254 (3) (e)**

10 *substitute*

11 (e) if the order sought relates to the pruning of a tree that is a
12 protected tree under the *Tree Protection Act 2005*—the
13 conservator; and

14 *Note* For restrictions on pruning etc a protected tree, see the *Tree*
15 *Protection Act 2005*.

16 **[1.17] Section 255 (2) (e)**

17 *substitute*

18 (e) if the proposed order relates to the pruning of a tree that is a
19 protected tree under the *Tree Protection Act 2005*—the
20 conservator; and

21 *Note* For restrictions on pruning etc a protected tree, see the *Tree*
22 *Protection Act 2005*.

23 **[1.18] Section 257 (3) (k), note**

24 *substitute*

25 *Note* For restrictions on pruning etc a protected tree, see the *Tree*
26 *Protection Act 2005*.

1 **[1.19] Section 257A (f)**

2 *substitute*

3 (f) if the order relates to the pruning of a tree that is a protected
4 tree under the *Tree Protection Act 2005*—the conservator; and

5 *Note* For restrictions on pruning etc a protected tree, see the *Tree*
6 *Protection Act 2005*.

7 **Part 1.4 Roads and Public Places**
8 **Act 1937**

9 **[1.20] New section 13 (5)**

10 *insert*

11 (5) This section has effect in relation to a tree that is a registered tree
12 under the *Tree Protection Act 2005* subject to that Act, part 3
13 (Protection of trees).

14 *Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a
15 registered tree (or do prohibited groundwork in the tree's protection
16 zone) unless the damage or groundwork is allowed under that Act.
17 Application may be made to the conservator for approval of tree
18 damaging activity or prohibited groundwork (including in urgent
19 circumstances).

20 **Part 1.5 Utilities Act 2000**

21 **[1.21] New section 105 (5)**

22 *insert*

23 (5) This section has effect in relation to a tree that is a registered tree
24 under the *Tree Protection Act 2005* subject to that Act, part 3
25 (Protection of trees).

26 *Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a
27 registered tree (or do prohibited groundwork in the tree's protection
28 zone) unless the damage or groundwork is allowed under that Act.

1 Application may be made to the conservator for approval of tree
2 damaging activity or prohibited groundwork (including in urgent
3 circumstances).

4 **[1.22] New section 106 (3)**

5 *insert*

6 (3) This section has effect in relation to a tree that is a registered tree
7 under the *Tree Protection Act 2005* subject to that Act, part 3
8 (Protection of trees).

9 *Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a
10 registered tree (or do prohibited groundwork in the tree's protection
11 zone) unless the damage or groundwork is allowed under that Act.
12 Application may be made to the conservator for approval of tree
13 damaging activity or prohibited groundwork (including in urgent
14 circumstances).

15 **[1.23] New section 125 (8A)**

16 *insert*

17 (8A) This section has effect in relation to a tree that is a registered tree
18 under the *Tree Protection Act 2005* subject to that Act, part 3
19 (Protection of trees).

20 *Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a
21 registered tree (or do prohibited groundwork in the tree's protection
22 zone) unless the damage or groundwork is allowed under that Act.
23 Application may be made to the conservator for approval of tree
24 damaging activity or prohibited groundwork (including in urgent
25 circumstances).

26 **[1.24] Section 125**

27 *renumber subsections when Act next republished under Legislation*
28 *Act*

- 1 **[1.25] New section 225F (5)**
- 2 *insert*
- 3 (5) This section has effect in relation to a tree that is a registered tree
4 under the *Tree Protection Act 2005* subject to that Act, part 3
5 (Protection of trees).
- 6 *Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a
7 registered tree (or do prohibited groundwork in the tree's protection
8 zone) unless the damage or groundwork is allowed under that Act.
9 Application may be made to the conservator for approval of tree
10 damaging activity or prohibited groundwork (including in urgent
11 circumstances).
- 12 **[1.26] New section 225G (3)**
- 13 *insert*
- 14 (3) This section has effect in relation to a tree that is a registered tree
15 under the *Tree Protection Act 2005* subject to that Act, part 3
16 (Protection of trees).
- 17 *Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a
18 registered tree (or do prohibited groundwork in the tree's protection
19 zone) unless the damage or groundwork is allowed under that Act.
20 Application may be made to the conservator for approval of tree
21 damaging activity or prohibited groundwork (including in urgent
22 circumstances).
- 23 **[1.27] New section 225X (9A)**
- 24 *insert*
- 25 (9A) This section has effect in relation to a tree that is a registered tree
26 under the *Tree Protection Act 2005* subject to that Act, part 3
27 (Protection of trees).
- 28 *Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a
29 registered tree (or do prohibited groundwork in the tree's protection
30 zone) unless the damage or groundwork is allowed under that Act.
31 Application may be made to the conservator for approval of tree
32 damaging activity or prohibited groundwork (including in urgent
33 circumstances).

- 1 **[1.28] Section 225X**
- 2 *renumber subsections when Act next republished under Legislation*
- 3 *Act*

1 Dictionary

2 (see s 4)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to
4 this Act.

5 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • appoint
- 7 • conservator of flora and fauna
- 8 • contravene
- 9 • exercise
- 10 • function
- 11 • heritage council
- 12 • planning and land authority
- 13 • public employee
- 14 • public servant.

15 *advisory panel* means the Tree Advisory Panel established under
16 section 66.

17 *appeal*, in relation to a reviewable decision, means an application to
18 the administrative appeals tribunal to review the decision.

19 *appeal period* means the period within which an appeal may be
20 made.

21 *approval criteria*—see section 19.

22 *AS 4373* means the Australian Standard entitled ‘AS 4373-1996
23 Pruning of amenity trees’, as in force from time to time.

24 *at premises* includes in or on the premises.

25 *authorised person* means an authorised person under section 83.

26 *built-up urban area*—see section 7.

27 *cancellation criteria*—see section 43 (1).

28 *connected*, for part 12 (Enforcement)—see section 82.

- 1 **conservator** means the conservator of flora and fauna.
- 2 **damage** a protected tree—see section 12.
- 3 **declared site** means an area declared to be a declared site under
4 section 59.
- 5 **development**, for part 11 (Land development applications)—see
6 section 78.
- 7 **heritage significance**—see the *Heritage Act 2004*, section 10.
- 8 **incorporated document** means an instrument (or provision of an
9 instrument) applied, adopted or incorporated by a statutory
10 instrument under this Act.
- 11 **Land Act** means the *Land (Planning and Environment) Act 1991*.
- 12 **land management agency**, for land where a tree is located, means
13 the entity responsible for managing the use of the land under a law
14 of the Territory or Commonwealth.
- 15 **lopping**—see section 12.
- 16 **leased land** means leased territory land, other than land leased for
17 rural purposes, or purposes including rural purposes.
- 18 **major pruning**—see section 13.
- 19 **occupier**, of premises, for part 12 (Enforcement)—see section 82.
- 20 **offence**, for part 12 (Enforcement)—see section 82.
- 21 **pollarding**—see section 12.
- 22 **premises** includes land.
- 23 **prohibited groundwork**—see section 14.
- 24 **protected tree**—see section 8.
- 25 **protection zone**, for a protected tree—see section 11.
- 26 **provisionally register** a tree means provisionally register the tree
27 under section 50.

- 1 **register** a tree means register the tree under section 52.
- 2 **registered tree**—
- 3 (a) for the Act—see section 9; but
- 4 (b) for part 6 (Tree register)—see section 38.
- 5 **registration criteria**—see section 43 (1).
- 6 **regulated tree**—see section 10.
- 7 **restricted information** means information restricted under
- 8 section 61 (Restricted non-Aboriginal information) or section 62
- 9 (Restricted Aboriginal information).
- 10 **tree** includes a palm tree.
- 11 **tree management plan** means a tree management plan approved
- 12 under section 33.
- 13 **tree management precinct**—see section 10 (3).
- 14 **tree protection direction**—see section 74.
- 15 **tree register**—see section 39.

Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 2005.
- 2 Notification**
Notified under the Legislation Act on 2005.
- 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.