

2004–2005

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

MINUTES OF PROCEEDINGS

No. 37

THURSDAY, 22 SEPTEMBER 2005

1 The Assembly met at 10.30 a.m., pursuant to adjournment. A quorum of Members not being present, the Speaker (Mr Berry) ordered the bells to be rung. A quorum having been formed, the Speaker took the Chair and asked Members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

2 **HEALTH RECORDS (PRIVACY AND ACCESS) AMENDMENT BILL 2005 (NO. 2)**

Mr Corbell (Minister for Health), pursuant to notice, presented a Bill for an Act to amend the *Health Records (Privacy and Access) Act 1997*.

Papers: Mr Corbell presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 20 September 2005.

Title read by Clerk.

Mr Corbell moved—That this Bill be agreed to in principle.

Debate adjourned (Mr Smyth—Leader of the Opposition) and the resumption of the debate made an order of the day for the next sitting.

3 **DANGEROUS SUBSTANCES (ASBESTOS) AMENDMENT BILL 2005 (NO. 2)**

Mr Corbell (Acting Minister for Industrial Relations), pursuant to notice, presented a Bill for an Act to amend the *Dangerous Substances (Asbestos) Amendment Act 2004* and the *Dangerous Substances (Asbestos) Amendment Act 2005*.

Papers: Mr Corbell presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 20 September 2005.

Title read by Clerk.

Mr Corbell moved—That this Bill be agreed to in principle.

Debate adjourned (Mr Mulcahy) and the resumption of the debate made an order of the day for the next sitting.

4 NEW P-10 SCHOOL IN WEST BELCONNEN—SELECT COMMITTEE—PROPOSED APPOINTMENT

Mrs Dunne, pursuant to notice, moved—That:

- (1) a Select Committee on the establishment of a new P-10 school in West Belconnen be appointed to:
 - (a) examine:
 - (i) the process by which the Government determined to close and demolish Ginninderra District High School and replace it with a 1500 student school;
 - (ii) the educational research that underpins the Government decision;
 - (iii) the feasibility of the project including the demographic support for a school of 1500 students;
 - (iv) the effect on educational choice in Belconnen;
 - (v) the effect on Belconnen families;
 - (vi) the impact on other schools in Belconnen; and
 - (vii) the likely ramifications on Government schooling elsewhere in the ACT; and
 - (b) investigate and report on options for the future delivery of schooling in West Belconnen, taking into account of educational, financial and social impacts on students, their families and the broader community;
- (2) the Committee be composed of:
 - (a) one member to be nominated by the Government;
 - (b) one member to be nominated by the Opposition; and
 - (c) one member to be nominated by the cross bench;

to be notified in writing to the Speaker within four hours after the passing of this resolution;
- (3) the Committee report by the first sitting day in 2006;
- (4) the Committee may also provide interim reports on its progress; and
- (5) the foregoing provisions of this resolution so far as they are inconsistent with the standing orders have effect notwithstanding anything contained in the standing orders.

Debate ensued.

Ms Porter addressing the Assembly—

It being 45 minutes after the commencement of Assembly business—

Ordered—That the time allotted to Assembly business be extended by 30 minutes.

Debate continued.

Question—put.

The Assembly voted—

AYES, 7		NOES, 8	
Mrs Burke	Mr Seselja	Mr Berry	Ms MacDonald
Mrs Dunne	Mr Smyth	Mr Corbell	Ms Porter
Dr Foskey	Mr Stefaniak	Mr Gentleman	Mr Quinlan
Mr Pratt		Mr Hargreaves	Mr Stanhope

And so it was negatived.

5 EXECUTIVE BUSINESS—PRECEDENCE

Ordered—That Executive business be called on forthwith.

6 TREE PROTECTION BILL 2005

The Assembly, according to order, resumed further consideration at the detail stage.

Detail Stage

Clauses 60 and 61, by leave, taken together and agreed to.

Clause 62—

Mr Stanhope (Minister for the Environment), by leave, moved his amendments Nos. 23 and 24 together (*see* [Schedule 3](#)).

Standing order 213—Quoting document: Mrs Dunne, pursuant to standing order 213, moved—That the document quoted from by Mr Stanhope be presented to the Assembly.

Question—put.

The Assembly voted—

AYES, 7		NOES, 8	
Mrs Burke	Mr Seselja	Mr Berry	Ms MacDonald
Mrs Dunne	Mr Smyth	Mr Corbell	Ms Porter
Dr Foskey	Mr Stefaniak	Mr Gentleman	Mr Quinlan
Mr Pratt		Mr Hargreaves	Mr Stanhope

And so it was negatived.

Amendments agreed to.

Clause 62, as amended, agreed to.

Clauses 63 and 64, by leave, taken together and agreed to.

Clause 65—

On the motion of Mr Stanhope, his amendment No. 25 (*see* [Schedule 3](#)) was made.

Clause 65, as amended, agreed to.

Clause 66 agreed to.

Clause 67—

Dr Foskey, by leave, moved her amendments Nos. 6 to 8 together (*see* [Schedule 1](#)).

Debate continued.

Question—put.

The Assembly voted—

AYES, 7		NOES, 8	
Mrs Burke	Mr Seselja	Mr Berry	Ms MacDonald
Mrs Dunne	Mr Smyth	Mr Corbell	Ms Porter
Dr Foskey	Mr Stefaniak	Mr Gentleman	Mr Quinlan
Mr Pratt		Mr Hargreaves	Mr Stanhope

And so it was negatived.

Clause 67 agreed to.

Debate interrupted in accordance with standing order 74 and the resumption of the debate made an order of the day for a later hour this day.

7 QUESTIONS

Questions without notice were asked.

8 QUESTION ON NOTICE NO. 467—ANSWER—EXPLANATION

Mr Smyth (Leader of the Opposition), pursuant to standing order 118A, asked Mr Corbell (Minister for Health) for an explanation concerning the answer to question on notice No. 467.

Mr Corbell gave an explanation.

9 QUESTION ON NOTICE NOS. 489 AND 490—ANSWERS—EXPLANATION

Mr Pratt, pursuant to standing order 118A, asked Mr Corbell (Minister for Planning) for an explanation concerning the answers to questions on notice Nos. 489 and 490.

Mr Corbell gave an explanation.

10 QUESTION ON NOTICE NO. 495—ANSWER—EXPLANATION

Mr Pratt, pursuant to standing order 118A, asked Mr Hargreaves (Minister for Police and Emergency Services) for an explanation concerning the answer to question on notice No. 495.

Mr Hargreaves gave an explanation.

11 PRESENTATION OF PAPERS

Mr Quinlan (Treasurer) presented the following papers:

Financial Management Act, pursuant to section 14—Instrument directing a transfer of funds within the Chief Minister's Department, including a statement of reasons, dated 14 September 2005.

Territory Owned Corporations Act, pursuant to subsection 19(3)—Statement of Corporate Intent—ACTTAB, 1 July 2005 to 30 June 2006.

12 PRESENTATION OF PAPER

Mr Stanhope (Chief Minister) presented the following paper:

Utilities Act—Utilities (Variation of Industry Code) Determination 2005 (No. 2)—Disallowable Instrument DI2005-132—Revised explanatory statement.

13 A.C.T. MINISTERIAL ADVISORY COUNCIL ON AGEING—ANNUAL REPORT 2004-2005—PAPER AND STATEMENT BY MINISTER

Mr Stanhope (Chief Minister) presented the following paper:

ACT Ministerial Advisory Council on Ageing—Annual Report 2004-2005—

and, by leave, made a statement in relation to the paper.

14 LAND (PLANNING AND ENVIRONMENT) ACT—APPROVAL—VARIATION NO. 205 TO THE TERRITORY PLAN—OASIS LEISURE CENTRE DEAKIN—BLOCK 11 SECTION 68 DEAKIN—PAPER AND STATEMENT BY MINISTER

Mr Corbell (Minister for Planning) presented the following paper:

Land (Planning and Environment) Act, pursuant to subsection 29(1)—Approval of Variation No. 205 to the Territory Plan—Oasis Leisure Centre Deakin—Block 11 Section 68 Deakin, dated 21 September 2005, together with background papers, a copy of the summaries and reports, and a copy of any direction or report required—

and, by leave, made a statement in relation to the paper.

15 LAND (PLANNING AND ENVIRONMENT) ACT—APPROVAL—VARIATION NO. 214 TO THE TERRITORY PLAN—VILLAGE OF HALL—PAPER AND STATEMENT BY MINISTER

Mr Corbell (Minister for Planning) presented the following paper:

Land (Planning and Environment) Act, pursuant to subsection 29(1)—Approval of Variation No. 214 to the Territory Plan—Village of Hall, dated 21 September 2005, together with background papers, a copy of the summaries and reports, and a copy of any direction or report required—

and, by leave, made a statement in relation to the paper.

16 MATTER OF PUBLIC IMPORTANCE—DISCUSSION—MANAGEMENT OF COMMUNITY SAFETY

The Assembly was informed that Mrs Dunne, Dr Foskey, Ms Porter and Mr Pratt had proposed that matters of public importance be submitted to the Assembly for discussion. In accordance with the provisions of standing order 79, the Speaker had determined that the matter proposed by Mr Pratt be submitted to the Assembly, namely, “The management of community safety under the current ACT Government.”.

Discussion ensued.

The time for discussion having expired—

Discussion concluded.

17 GINNINDERRA DISTRICT HIGH SCHOOL—PAPER

Mrs Dunne, by leave, presented the following paper:

Ginninderra District High School—Petition not to close until consultation.

18 TREE PROTECTION BILL 2005

The Assembly, according to order, resumed further consideration at the detail stage.

Detail Stage

Clauses 68 to 72, by leave, taken together and agreed to.

Clause 73—

Mrs Dunne moved her amendment No. 8 (*see* [Schedule 2](#))

Debate continued.

Amendment negatived.

Clause 73 agreed to.

Clauses 74 to 78, by leave, taken together and agreed to.

Clause 79—

On the motion of Mr Stanhope (Minister for the Environment), by leave, his amendments Nos. 26 and 27 (*see* [Schedule 3](#)) were made together.

Clause 79, as amended, agreed to.

Clause 80—

On the motion of Mr Stanhope, by leave, his amendments No. 28 and 29 were made together (*see* [Schedule 3](#)).

Clause 80, as amended, agreed to.

Clause 81—

On the motion of Mr Stanhope, his amendment No. 30 (*see* [Schedule 3](#)) was made.

Clause 81, as amended, agreed to.

Clauses 82 to 89, by leave, taken together and agreed to.

Clause 90—

Mrs Dunne moved her amendment No. 9 (*see* [Schedule 2](#)).

Debate continued.

Amendment negatived.

Clause 90 agreed to.

Clauses 91 to 105, by leave, taken together and agreed to.

Clause 106—

On the motion of Mr Stanhope, his amendment No. 31 (*see* [Schedule 3](#)) was made.

Clause 106, as amended, agreed to.

Clauses 107 to 112, by leave, taken together and agreed to.

Clause 113—

Mrs Dunne moved her amendment No. 10 (*see* [Schedule 2](#)).

Debate continued.

Amendment negatived.

Clause 113 agreed to.

Clause 114 agreed to.

Clause 115—

On the motion of Mr Stanhope, his amendment No. 32 (*see* [Schedule 3](#)) was made.

Clause 115, as amended, agreed to.

Clause 116—

On the motion of Mr Stanhope, his amendment No. 33 (*see* [Schedule 3](#)) was made.

Clause 116, as amended, agreed to.

Clause 117—

On the motion of Mr Stanhope, his amendment No. 34 (*see* [Schedule 3](#)) was made.

Clause 117, as amended, agreed to.

Clauses 118 to 121, by leave, taken together and agreed to.

Schedule 1—

On the motion of Mr Stanhope, by leave, his amendments Nos. 35 to 40 (*see* [Schedule 3](#)) were made together.

Schedule 1, as amended, agreed to.

Dictionary—

On the motion of Mr Stanhope, by leave, his amendments Nos. 41 to 43 (*see* [Schedule 3](#)) were made together.

Dictionary, as amended, agreed to.

Title debated and agreed to.

Clause 10—Reconsideration:

Mrs Dunne, pursuant to standing order 187, moved—That clause 10 be reconsidered.

Question—put and passed.

Clause 10—

Mrs Dunne moved her amendment No. 1 (*see* [Schedule 4](#)).

Debate continued.

Question—put.

The Assembly voted—

AYES, 6		NOES, 7	
Mrs Burke	Mr Pratt	Mr Berry	Ms Porter
Mrs Dunne	Mr Stefaniak	Mr Gentleman	Mr Quinlan
Dr Foskey		Mr Hargreaves	Mr Stanhope
Mr Mulcahy		Ms MacDonald	

And so it was negatived.

Clause 10 agreed to.

Question—That this Bill, as amended, be agreed to—put.

The Assembly voted—

AYES, 8		NOES, 5	
Mr Berry	Ms MacDonald	Mrs Burke	Mr Stefaniak
Dr Foskey	Ms Porter	Mrs Dunne	
Mr Gentleman	Mr Quinlan	Mr Mulcahy	
Mr Hargreaves	Mr Stanhope	Mr Pratt	

And so it was resolved in the affirmative—Bill, as amended, agreed to.

19 FINANCIAL MANAGEMENT LEGISLATION AMENDMENT BILL 2005

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate resumed.

Question—That this Bill be agreed to in principle—put and passed.

Detail Stage

Clause 1—

Debate adjourned (Mrs Dunne) and the resumption of the debate made an order of the day for the next sitting.

20 ADJOURNMENT

Mr Corbell (Manager of Government Business) moved—That the Assembly do now adjourn.

Debate ensued.

Question—put and passed.

And then the Assembly, at 6.28 p.m., adjourned until Tuesday, 18 October 2005 at 10.30 a.m.

MEMBERS' ATTENDANCE: All Members were present at some time during the sitting, except Ms Gallagher*.

*On leave

Tom Duncan
Clerk of the Legislative Assembly

SCHEDULES OF AMENDMENTS

Schedule 1

TREE PROTECTION BILL 2005

Amendments circulated by Dr Foskey

1

Clause 3 (1) (a)

Page 3, line 4—

omit

exceptional

substitute

significant

2

Clause 19 (2)

Page 16, line 4—

omit clause 19 (2), substitute

(2) A determination is a disallowable instrument.

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

3

Clause 22

Page 16, line 25—

omit

may

substitute

must

4

Clause 36 (2)

Page 25, line 6—

omit clause 36 (2), substitute

(2) A determination is a disallowable instrument.

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

5**Clause 43 (2)****Page 28, line 10—**

omit clause 43 (2), substitute

(2) A determination is a disallowable instrument.

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

6**New clause 67 (3) (aa)****Page 43, line 19—**

insert

(aa) ecology;

7**New clause 67 (4) (aa)****Page 43, line 26—**

insert

(aa) 1 or more members with extensive experience in ecology;
and

8**Clause 67 (4) (b)****Page 44, line 2—**

omit

2 or more

substitute

3 or more

Schedule 2

TREE PROTECTION BILL 2005

Amendments circulated by Mrs Dunne

1

Clause 7 (3)

Page 5, line 3—

omit clause 7 (3), substitute

- (3) A declaration is a disallowable instrument.

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

2

Clause 19 (2)

Page 16, line 4—

omit clause 19 (2), substitute

- (2) A determination is a disallowable instrument.

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

3

Clause 29 (2)

Page 22, line 14—

omit clause 29 (2), substitute

- (2) A determination is a disallowable instrument.

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

4

Clause 36 (2)

Page 25, line 6—

omit clause 36 (2), substitute

- (2) A determination is a disallowable instrument.

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

5**Clause 37 (3)****Page 25, line 14—***omit clause 37 (3), substitute*

- (3) A declaration is a disallowable instrument.

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

6**Clause 43 (2)****Page 28, line 10—***omit clause 43 (2), substitute*

- (2) A determination is a disallowable instrument.

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

7**Clause 59 (3)****Page 37, line 12—***omit clause 59 (3), substitute*

- (3) A declaration is a disallowable instrument.

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

8**Clause 73 (2)****Page 47, line 5—***omit clause 73 (2), substitute*

- (2) A determination is a disallowable instrument.

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

9**Clause 90 (6)****Page 59, line 14—***omit*

10**Clause 113 (2)****Page 76, line 11—***omit*

Schedule 3**TREE PROTECTION BILL 2005**

Amendments circulated by the Minister for the Environment

1
Clause 15 heading
Page 11, line 2—*omit the heading, substitute***15 Damaging protected trees—general**

2
Clause 15 (4) to (6)
Page 11, line 17—*omit*

3
Proposed new clause 15A
Page 11, line 22—*insert***15A Damaging protected trees—work done as part of a business**

- (1) This section applies to a person who is doing work as part of a business involved in—
- (a) property development or maintenance; or
 - (b) any other activity in relation to land that may affect trees on the land.

Examples of activities for par (b)

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

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

- (2) The person commits an offence if—
- (a) the person does something that damages a protected tree; and
 - (b) the person is reckless about whether doing the thing would damage the protected tree.

Maximum penalty: 400 penalty units.

- (3) The person commits an offence if the person does something and is reckless about whether doing the thing would damage a protected tree.

Maximum penalty: 200 penalty units.

- (4) The person commits an offence if—
- (a) the person does something that damages a protected tree; and
 - (b) the person is negligent about whether doing the thing would damage the protected tree.

Maximum penalty: 100 penalty units.

- (5) The person commits an offence if the person does something that damages, or is likely to damage, a protected tree.

Maximum penalty: 50 penalty units.

- (6) For subsections (2), (3) and (4), strict liability applies to the circumstance that the tree is a protected tree.
- (7) An offence against subsection (5) is a strict liability offence.

4

Clause 16 heading

Page 11, line 23—

omit the heading, substitute

16

Doing prohibited groundwork—general

5

Clause 16 (4) and (5)

Page 12, line 22—

omit

6

Proposed new clause 16A

Page 13, line 3—

insert

16A

Doing prohibited groundwork—work done as part of a business

- (1) This section applies to a person who is doing work as part of a business involved in—
- (a) property development or maintenance; or
 - (b) any other activity in relation to land that may affect trees on the land.

Examples of activities for par (b)

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

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

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

Maximum penalty: 200 penalty units.

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

Maximum penalty: 100 penalty units.

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

Maximum penalty: 50 penalty units.

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

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

7**Clause 17 heading****Page 13, line 4—**

omit the heading, substitute

17**Exceptions—tree damaging and prohibited
groundwork offences**

8**Clause 17 (1)****Page 13, line 5—**

omit

Section 15 and section 16

substitute

Sections 15 to 16A

9**Proposed new clause 17 (1) (c) (iia)****Page 13, line 14—**

insert

- (ia) a condition of a development approval that requires a person to do or not do something in relation to—
 - (A) a protected tree; or
 - (B) the protection zone for a protected tree; or
 - (C) a declared site; or

10**Clause 17 (1) (d)****Page 13, line 18—**

omit

11**Clause 17 (2)****Page 14, line 19—**

omit

12**Clause 17 (3), proposed new definition of *development approval*****Page 14, line 24—**

insert

development approval means an approval in force under the Land Act, part 6 for a development.

 13

Clause 18 (1) (c), proposed new example
Page 15, line 16—

insert

Example of tree protection condition for par (c)

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

14

Clause 18 (3)
Page 15, line 20—

omit clause 18 (3), substitute

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

Maximum penalty: 50 penalty units.

Examples of activities for par (b) (ii)

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

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

- (4) An offence against subsection (3) is a strict liability offence.
- (5) In this section:

engage in conduct means—

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

15

Proposed new clause 24 (2) (f)
Page 18, line 5—

insert

- (f) if the application relates to an Aboriginal heritage tree—
 each representative Aboriginal organisation.
-

16

Clause 28 (1)
Page 21, line 2—

omit

17**Clause 28 (2)****Page 21, line 11—***after*

given

insert

to the person

18**Clause 34 (2) (a) and (b)****Page 24, line 9—***omit clause 34 (2) (a) and (b), substitute*

- (a) the lessee of, or land management agency for, the land where the tree is located; and
- (b) if the tree is on leased land—the lessee of, or land management agency for, land that—
 - (i) adjoins the land where the tree is located; and
 - (ii) is within 50m of the tree; and

19**Proposed new clause 34 (2) (d)****Page 24, line 14—***insert*

- (d) if the plan is for an Aboriginal heritage tree—each representative Aboriginal organisation.

20**Clause 47 (1) (b)****Page 29, line 20—***omit*

tree protection zone

substitute

protection zone

21**Proposed new clause 48 (3)****Page 30, line 17—***insert*

- (3) If the tree is an Aboriginal heritage tree, the heritage council must consult, and consider the views of, each representative Aboriginal organisation before giving the conservator advice on the proposed registration.
-

22
Proposed new clause 55 (3)**Page 34, line 23—***insert*

- (3) If the tree is an Aboriginal heritage tree, the heritage council must consult, and consider the views of, each representative Aboriginal organisation before giving the conservator advice on the proposed cancellation.

23
Proposed new clause 62 (3) (e)**Page 39, line 16—***insert*

- (e) each representative Aboriginal organisation.

24
Clause 62 (4)**Page 39, line 17—***omit*

25
Clause 65 (3), definition of *interested person*, proposed new paragraph (f)**Page 42, line 2—***insert*

- (f) if the tree is an Aboriginal heritage tree—each representative Aboriginal organisation.

26
Clause 79, note 1**Page 50, line 10—***omit note 1, substitute**Note 1 Conservator to be given copy of development application*

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

27
Clause 79, note 4**Page 50, line 23—***omit note 4, substitute*

Note 4 Approvals

A development approval must not be given that is inconsistent with the advice of the conservator in relation to a registered tree.

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

28**Clause 80 (2)****Page 51, line 15—***omit*

its decision

substitute

the development

29**Clause 80 (3 (a))****Page 51, line 20—***omit clause 80 (3) (a), substitute*

- (a) consider the application, including any tree management plan, proposed tree management plan, or proposed amendment of a tree management plan, included with the application; and

30**Clause 81****Page 51, line 22—***omit clause 81, substitute***81****Requirements for conservator's advice about tree protection**

- (1) The conservator's advice under section 80 in relation to a development must include advice about tree protection requirements for each protected tree with a protection zone on, or partly on, the land subject to the development.
- (2) Without limiting subsection (1), the advice may—
- (a) include information about the trees on the land; and
 - (b) set out the changes (if any) the conservator considers should be made to any tree management plan or proposed tree management plan that relates to the application, having regard to—
 - (i) the guidelines approved under section 29; and
 - (ii) the advice (if any) of the advisory panel; and
 - (iii) anything else the conservator considers relevant.

31**Clause 106 (1) (a) (i) to (iii)****Page 71, line 6—***omit clause 106 (1) (a) (i) to (iii), substitute*

- (i) section 15 (Damaging protected trees—general);
- (ia) section 15A (Damaging protected trees—work done as part of a business);
- (ii) section 16 (Doing prohibited groundwork—general);
- (ia) section 16A (Doing prohibited groundwork—work done as part of a business);
- (iii) section 18 (Failing to notify or contravening tree protection conditions; of development approval)

32**Clause 115 (2)****Page 77, line 14—***omit*

- *Tree Protection (Interim Scheme) Appointment 2004 (No 1)*
DI2004-47
- *Tree Protection (Interim Scheme) Appointment 2004 (No 2)*
DI2004-158

substitute

- *Tree Protection (Interim Scheme) Appointment 2005*
DI2005-159

33**Clause 116 (1)****Page 77, line 19—***after*

individual tree

insert

in a built-up urban area

34**Clause 117****Page 78, line 3—***omit clause 117, substitute***117 Interim tree management precincts**

The built-up urban area in each district under the *Districts Act 2002* is taken to be a tree management precinct on the commencement day.

35**Schedule 1****Amendment 1.3****Proposed new section 3A****Page 79, line 18—**

omit proposed new section 3A, substitute

3A Individual heritage trees

- (1) The council must not register an individual tree in a built-up urban area.
- (2) Subsection (1) does not prevent the registration of a place where a tree or trees form part of the heritage significance of the place.
- (3) In this section:

built-up urban area—see the *Tree Protection Act 2005*, section 7 (2) (Application of Act—built-up urban area).

Note The *Tree Protection Act 2005* includes provision for the protection of trees of heritage significance in built-up urban areas. For trees of heritage significance, it provides for the heritage council to be told about approved activities, tree management plans and provisional registration under that Act. It also provides for the heritage council's advice to be taken into account in deciding whether to register a tree of heritage significance under that Act.

36**Schedule 1****Amendment 1.4****Proposed new definitions****Page 80, line 17—**

insert

registered tree—see the *Tree Protection Act 2005*, dictionary.

regulated tree—see the *Tree Protection Act 2005*, dictionary.

tree management plan—see the *Tree Protection Act 2005*, dictionary.

37**Schedule 1****Amendment 1.7****Proposed new section 229 (4) (b) (i) and (ii)****Page 81, line 7—**

omit proposed new section 229 (4) (b) (i) and (ii), substitute

- (i) a copy of each application that relates to land that includes all or part of—
 - (A) the protection zone for a protected tree; or
 - (B) a declared site; and

- (ii) if a tree management plan approved under the *Tree Protection Act 2005*, part 4, a proposed tree management plan, or a proposed amendment of a tree management plan, is included with the application—a copy of the plan or proposed plan or amendment; and

38

Schedule 1

Amendment 1.14

Page 82, line 20—

omit amendment 1.14, substitute

[1.14] New section 231 (3A) to (3D)

insert

- (3A) The relevant authority must not make a decision under section 230 that is inconsistent with the advice of the conservator under the *Tree Protection Act 2005*, section 80 in relation to a registered tree or a declared site.
- (3B) The relevant authority may make a decision under section 230 that is inconsistent with the advice of the conservator under the *Tree Protection Act 2005*, section 80 in relation to a regulated tree only if the authority is satisfied, having regard to the broader strategic objectives of the territory plan, that all reasonable development options and design solutions have been considered to avoid or minimise the need to damage the tree or undertake prohibited groundwork.
- (3C) In making a decision under section 230 that relates to a regulated tree, the relevant authority may, under this section—
 - (a) if a tree management plan is already in force for the tree—approve an amendment of, or replacement for, the tree management plan; or
 - (b) in any other case—approve a tree management plan for the tree.
- (3D) A decision mentioned in subsection (3B) must not be made by a person acting as delegate of the planning and land authority.

39

Schedule 1

Proposed new amendment 1.15A

Page 83, line 8—

insert

[1.15A] New section 244B

insert

244B Notice of decision to conservator

If an application relates to land that includes all or part of the protection zone for a protected tree, or all or part of a declared site, the planning and land authority must give the conservator—

- (a) written notice of the decision to approve or refuse the application; and
- (b) a copy of the decision.

40**Schedule 1****Proposed new amendment 1.19A****Page 84, line 6—***insert***[1.19A] Dictionary, new definitions***insert*

damage a protected tree, for part 6 (Approvals and orders)—see section 222.

declared site, for part 6 (Approvals and orders)—see section 222.

prohibited groundwork, for part 6 (Approvals and orders)—see section 222.

protected tree, for part 6 (Approvals and orders)—see section 222.

protection zone, for a protected tree, for part 6 (Approvals and orders)—see section 222.

registered tree, for part 6 (Approvals and orders)—see section 222.

regulated tree, for part 6 (Approvals and orders)—see section 222.

41**Dictionary, proposed new definition of *Aboriginal heritage tree*****Page 88, line 14—***insert*

Aboriginal heritage tree—a tree is an ***Aboriginal heritage tree*** if it is of particular significance to Aboriginal people because of either or both of the following:

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of any Aboriginal people of the area where the tree is located.

42

Dictionary, proposed new definition of *representative Aboriginal organisation*

Page 90, line 6—

insert

representative Aboriginal organisation means—

- (a) an organisation declared under the *Heritage Act 2004*, section 14 to be a representative Aboriginal organisation for that Act; or
- (b) an organisation prescribed by regulation for this definition.

43

Dictionary, definition of *tree management plan*

Page 90, line 11—

omit the definition, substitute

tree management plan—

- (a) a tree management plan approved under section 33; and
 - (b) in parts 2 to 4—includes a tree management plan approved under the Land Act, section 231 (3C).
-

Schedule 4**TREE PROTECTION BILL 2005**

Amendments circulated by Mrs Dunne

1**Clause 10 (1)****Page 6, line 11—***omit*on leased land
