

2004–2005

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

MINUTES OF PROCEEDINGS

No. 35

TUESDAY, 20 SEPTEMBER 2005

- 1 The Assembly met at 10.30 a.m., pursuant to adjournment. The Speaker (Mr Berry) took the Chair and made a formal recognition that the Assembly was meeting on the lands of the traditional owners. The Speaker asked Members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

2 **PETITION**

The Clerk announced that the following Member had lodged a petition for presentation:

Mr Stefaniak, from 1032 residents, requesting that the Assembly take all necessary steps to increase and improve the Nicholls Shopping Centre car park.

3 **PLANNING AND ENVIRONMENT—STANDING COMMITTEE—REPORT 15—DRAFT VARIATION TO THE TERRITORY PLAN NO. 238—MACQUARIE HOTEL REDEVELOPMENT SECTION 27 BARTON—REPORT NOTED**

Mr Gentleman (Chair) presented the following report:

Planning and Environment—Standing Committee—Report 15—*Draft Variation to the Territory Plan No. 238—Macquarie Hotel Redevelopment Section 27 Barton*, dated 5 September 2005, together with a copy of the extracts of the relevant minutes of proceedings—

and moved—That the report be noted.

Question—put and passed.

4 **LEGAL AFFAIRS—STANDING COMMITTEE (PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE)—SCRUTINY REPORT 16—STATEMENT BY CHAIR**

Mr Stefaniak (Chair) presented the following report:

Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 16, dated 19 September 2005, together with the relevant minutes of proceedings—

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

5 LITTER 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.

Paper: Mr Pratt, by leave, presented the following paper:

Litter Amendment Bill 2005—Copy of proposed amendment.

Debate continued.

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

Detail Stage

Bill, by leave, taken as a whole—

Mr Pratt moved his amendment No. 1 (*see* [Schedule 1](#)).

Debate continued.

Amendment negatived.

Bill, as a whole, agreed to.

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

6 TREE PROTECTION 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.

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 MINISTERIAL ARRANGEMENTS

Mr Stanhope (Chief Minister) informed the Assembly of the absence of Ms Gallagher this sitting week and advised the Assembly that questions without notice normally directed to the Minister for Education and Training could be directed to Mr Stanhope and those normally directed to the Minister for Children, Youth and Family Support; the Minister for Women; and the Minister for Industrial Relations could be directed to Mr Corbell (Minister for Health).

8 QUESTIONS

Questions without notice were asked.

Standing order 213—Quoting document: Mr Stefaniak, pursuant to standing order 213, moved—That the document quoted from by Mr Stanhope (Attorney-General) be presented to the Assembly.

Question—put.

The Assembly voted—

	AYES, 6		NOES, 9
Mrs Burke	Mr Stefaniak	Mr Berry	Ms MacDonald
Mrs Dunne		Mr Corbell	Ms Porter
Mr Mulcahy		Dr Foskey	Mr Quinlan
Mr Pratt		Mr Gentleman	Mr Stanhope
Mr Seselja		Mr Hargreaves	

And so it was negatived.

9 AUDITOR-GENERAL ACT—AUDITOR-GENERAL’S REPORT—NO. 3 2005—REPORTING ON ECOLOGICALLY SUSTAINABLE DEVELOPMENT

The Speaker presented the following paper:

Auditor-General Act—Auditor-General’s Report No. 3 2005—Reporting on ecologically sustainable development, dated 1 July 2005.

10 PUBLIC SECTOR MANAGEMENT ACT—EXECUTIVE CONTRACTS—PAPERS AND STATEMENT BY MINISTER

Mr Stanhope (Chief Minister) presented the following papers:

Public Sector Management Act, pursuant to sections 31A and 79—Copies of executive contracts or instruments—

Contract variations:

David Butt, dated 31 July 2005.

David Collett, dated 19 August 2005.

Meredith Whitten, dated 1 September 2005.

Richard Waldron Johnston.

Long-term contracts:

Sandra Lambert, dated 10 May 2005.

Schedule C variation:

Richard Johnston, dated 10 and 11 February 2005.

Short-term contracts:

Bronwyn Webster, dated 8 July 2005.

Clare Wall, dated 10 and 11 August 2005.

Colin Adrian, dated 16 August 2005.

David Hughes, dated June 2005.

Eugene Herbert, dated 26 July 2005.

Greg Jones, dated 10 August 2005.

Ian Cox, dated 12 August 2005.

Paul Thomas Fennell, dated 30 August 2005.

Phil Collins, dated 10 August 2005.

Russell Watkinson, dated 25 July 2005—

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

11 PRESENTATION OF PAPERS

Mr Stanhope (Chief Minister) presented the following papers:

Remuneration Tribunal Act, pursuant to section 12—Determinations, together with statements—Part-time Holders of Public Office—

ACT Insurance Authority Advisory Board—Determination No 179, dated 2 September 2005.

Essential Services Consumer Council—Presiding Member—Determination No 180, dated 2 September 2005.

12 PRESENTATION OF PAPER

Mr Stanhope (Minister for Arts, Heritage and Indigenous Affairs) presented the following paper:

Cultural Facilities Corporation Act, pursuant to subsection 29(2)—Cultural Facilities Corporation—Quarterly report 2004-2005—Fourth quarter (1 April to 30 June 2005).

13 PRESENTATION OF PAPERS

Mr Corbell (Manager of Government Business) presented the following papers:

Subordinate legislation (including explanatory statements unless otherwise stated)

Legislation Act, pursuant to section 64—

Animal Welfare Act—Animal Welfare (Australian Model Code of Practice for the Care and Use of Animals for Scientific Purposes) Approval 2005—Disallowable Instrument DI2005-188 (LR, 18 August 2005).

Construction Occupations (Licensing) Act—Construction Occupations (Licensing) Amendment Regulation 2005 (No. 1)—Subordinate Law SL2005-18 (LR, 26 August 2005).

Dangerous Substances (Explosives) Regulations 2004—Dangerous Substances (Explosives) Authorisation 2005 (No. 1)—Disallowable Instrument DI2005-199 (LR, 5 September 2005).

Domestic Animals Act—Domestic Animals (Dog Control Areas) Declaration 2005 (No. 1)—Disallowable Instrument DI2005-198 (LR, 1 September 2005).

Independent Competition and Regulatory Commission Act—Independent Competition and Regulatory Commission (Disclosure Guidelines) Determination 2005 (No. 1)—Disallowable Instrument DI2005-191 (LR, 22 August 2005).

Road Transport (General) Act—

Road Transport (General) (Application of Road Transport Legislation) Declaration 2005 (No. 9)—Disallowable Instrument DI2005-193 (LR, 29 August 2005).

Road Transport (General) (Parking Meter Fees) Determination 2005 (No. 1)—Disallowable Instrument DI2005-201 (LR, 5 September 2005).

Road Transport (General) (Parking Ticket Fees) Determination 2005 (No. 1)—Disallowable Instrument DI2005-200 (LR, 5 September 2005).

Stock Act—Stock Regulation 2005—Subordinate Law SL2005-17 (LR, 25 August 2005).

Tertiary Accreditation and Registration Act—

Tertiary Accreditation and Registration Council Appointment 2005 (No. 2)—
Disallowable Instrument DI2005-189 (LR, 19 August 2005).

Tertiary Accreditation and Registration Council Appointment 2005 (No. 3)—
Disallowable Instrument DI2005-190 (LR, 19 August 2005).

University of Canberra Act—University of Canberra (Academic Progress)
Amendment Statute 2005 (No. 1)—Disallowable Instrument DI2005-192 (LR,
25 August 2005).

Victims of Crime Regulation 2000—Victims of Crime (Victims Assistance Board)
Appointment 2005 (No. 5)—Disallowable Instrument DI2005-195 (LR, 1 September
2005).

Vocational Education and Training Act—

Vocational Education and Training Authority Appointment 2005 (No. 3)—
Disallowable Instrument DI2005-194 (LR, 29 August 2005).

Vocational Education and Training Authority Appointment 2005 (No. 4)—
Disallowable Instrument DI2005-196 (LR, 1 September 2005).

Vocational Education and Training Authority Appointment 2005 (No. 5)—
Disallowable Instrument DI2005-197 (LR, 1 September 2005).

14 MATTER OF PUBLIC IMPORTANCE—DISCUSSION—EDUCATION IN A.C.T. SCHOOLS

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 Mrs Dunne be submitted to the Assembly, namely, “The state of education in ACT schools.”.

Discussion ensued.

The time for discussion having expired—

Discussion concluded.

15 TREE PROTECTION 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.

The Assembly voted—

AYES, 9		NOES, 6	
Mr Berry	Ms MacDonald	Mrs Burke	Mr Stefaniak
Mr Corbell	Ms Porter	Mrs Dunne	
Dr Foskey	Mr Quinlan	Mr Mulcahy	
Mr Gentleman	Mr Stanhope	Mr Pratt	
Mr Hargreaves		Mr Seselja	

And so it was resolved in the affirmative.

Detail Stage

Clauses 1 and 2, by leave, taken together and agreed to.

Clause 3—

Dr Foskey moved her amendment No. 1 (*see* [Schedule 2](#)).

Debate continued.

Amendment negatived.

Clause 3 agreed to.

Clauses 4 to 6, by leave, taken together and agreed to.

Clause 7—

Mrs Dunne moved her amendment No. 1 (*see* [Schedule 3](#)).

Debate continued.

Amendment negatived.

Clause 7 agreed to.

Clauses 8 to 14, by leave, taken together and agreed to.

Clause 15—

On the motion of Mr Stanhope (Minister for the Environment), by leave, his amendments Nos. 1 and 2 were made together (*see* [Schedule 4](#)), after debate.

Paper: Mr Stanhope presented a supplementary explanatory statement to the Government amendments.

Clause 15, as amended, agreed to.

New clause—

On the motion of Mr Stanhope, new clause 15A (his amendment No. 3—*see* [Schedule 4](#)) was inserted in the Bill.

Clause 16—

On the motion of Mr Stanhope, by leave, his amendments Nos. 4 and 5 were made together (*see* [Schedule 4](#)).

Clause 16, as amended, agreed to.

New clause—

On the motion of Mr Stanhope, new clause 16A (his amendment No. 6—*see* [Schedule 4](#)) was inserted in the Bill.

Clause 17—

On the motion of Mr Stanhope, by leave, his amendments Nos. 7 to 12 were made together (*see* [Schedule 4](#)).

Clause 17, as amended, agreed to.

Clause 18—

On the motion of Mr Stanhope, by leave, his amendments Nos. 13 and 14 were made together (*see* [Schedule 4](#)).

Clause 18, as amended, agreed to.

Clause 19—

On the motion of Mrs Dunne, her amendment No. 2 (*see* [Schedule 3](#)) was made, after debate.

Clause 19, as amended, agreed to.

Clauses 20 and 21, by leave, taken together and agreed to.

Clause 22—

Dr Foskey moved her amendment No. 3 (*see* [Schedule 2](#)).

Debate continued.

Amendment negatived.

Clause 22 agreed to.

Clause 23 agreed to.

Clause 24—

On the motion of Mr Stanhope, his amendment No. 15 (*see* [Schedule 4](#)) was made.

Clause 24, as amended, agreed to.

Clauses 25 to 27, by leave, taken together and agreed to.

Clause 28—

On the motion of Mr Stanhope, by leave, his amendments Nos. 16 and 17 were made together (*see* [Schedule 4](#)).

Clause 28, as amended, agreed to.

Clause 29—

Mrs Dunne moved her amendment No. 3 (*see* [Schedule 3](#)).

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 29 agreed to.

Clauses 30 to 33, by leave, taken together and agreed to.

Clause 34—

On the motion of Mr Stanhope, by leave, his amendments Nos. 18 and 19 were made together (*see* [Schedule 4](#)).

Clause 34, as amended, agreed to.

Clause 35 agreed to.

Clause 36—

On the motion of Dr Foskey, her amendment No. 4 (*see* [Schedule 2](#)) was made, after debate.

Clause 36, as amended, agreed to.

Clause 37—

Mrs Dunne moved her amendment No. 5 (*see* [Schedule 3](#)).

Amendment negatived.

Clause 37 agreed to.

Clauses 38 to 42, by leave, taken together and agreed to.

Clause 43—

On the motion of Mrs Dunne, her amendment No. 6 (*see* [Schedule 3](#)) was made.

Clause 43, as amended, agreed to.

Clauses 44 to 46, by leave, taken together and agreed to.

Clause 47—

On the motion of Mr Stanhope, his amendment No. 20 (*see* [Schedule 4](#)) was made.

Clause 47, as amended, agreed to.

Clause 48—

On the motion of Mr Stanhope, his amendment No. 21 (*see* [Schedule 4](#)) was made.

Clause 48, as amended, agreed to.

Clauses 49 to 54, by leave, taken together and agreed to.

Clause 55—

On the motion of Mr Stanhope, his amendment No. 22 (*see* [Schedule 4](#)) was made.

Clause 55, as amended, agreed to.

Clauses 56 to 58, by leave, taken together and agreed to.

Clause 59—

Mrs Dunne moved her amendment No. 7 (*see* [Schedule 3](#)).

Debate continued.

Amendment negatived.

Debate continued.

Question—That clause 59 be agreed to—put.

The Assembly voted—

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

And so it was resolved in the affirmative.

Debate interrupted in accordance with standing order 34 and the resumption of the debate made an order of the day for the next sitting.

16 ADJOURNMENT

It being 6 p.m.—The question was proposed—That the Assembly do now adjourn.

Leave of absence to Member: Mr Corbell (Manager of Government Business) moved—That leave of absence be given to Ms Gallagher (Minister for Education and Training) for this sitting week.

Question—put and passed.

Debate ensued.

Question—put and passed.

And then the Assembly, at 6.27 p.m., adjourned until tomorrow 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

LITTER AMENDMENT BILL 2005

Amendment circulated by Mr Pratt

1

Clause 5

Page 3, line 9—

omit subclause (3), substitute

- (3) Subsection (1) does not apply to the exercise of a power by an authorised person under section 17(1) where the authorised person is clearly recognisable as an authorised officer for the purposes of enforcing the Act.
-

Schedule 2

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 3

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 4**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).
-