



TREES ACT 1997

[Consolidated as ~~at 7 April 2004~~ July 2008

on the authority of the Administrator
and in accordance with the
Enactments Reprinting Act 1980]

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Trees Act 1997

An Act to preserve and manage the taking of protected trees and to control the exploitation of the forestry resources of Norfolk Island

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Trees Act 1997*.

Commencement

2. (1) Section 1 and this section commence on the day on which notification of Assent is published in the Gazette.
(2) The remaining provisions commence on a day, or respective days, fixed by the Administrator by notice in the Gazette.

Objects

3. (1) The objects of this Act are as follows —
 - (a) to promote and protect the conservation of the natural environment and landscape beauty of Norfolk Island; and
 - (b) to regulate the use of, and access to, the forestry resources of Norfolk Island; and
 - (c) to encourage the cultivation of plantation timbers as a renewable resource.
- (2) In interpreting this Act a construction that would promote the objects of the Act under subsection 3(1) shall be preferred to a construction that would not promote those objects.

Application

4. This Act does not apply to —
- (a) land or any item located in the Norfolk Island National Park; or
 - (b) land or any item located in the Norfolk Island Botanic Garden; or
 - (c) land or any item located in a reserve.

Interpretation

5. In this Act, unless the contrary intention appears —
- “approved” means approved in writing by the executive member;
- “authorised officer” means a person authorised under section 25;
- “Chief Executive Officer” means the Chief Executive Officer within the meaning of the *Public Sector Management Act 2000*;
- “permit” means a permit granted under section 9;
- “protected tree” means a tree of a species prescribed for the purpose of this definition;
- “Register” means the register of plantations referred to in section 13;
- “registered plantation” means a plantation registered under section 13;
- “reserve” has the same meaning as in the *Public Reserves Act 1997*;
- “take” in relation to a protected tree means
- (a) fell; or
 - (b) ring bark; or
 - (c) remove; or
 - (d) injure; or
 - (e) destroy; and
- “timber licence” means a licence granted under Part 4.

Development applications under Planning Act 2002

5A. (1) In considering a development application under the *Planning Act 2002*, the executive member shall also have regard to the following matters¹—

- (a) the objects of this Act;
- (b) the likelihood of a permit under this Act being required in conjunction with the use and development, including likely future use and development of the land in question under the development approval sought;
- (c) whether such a permit is likely to be granted.

(2) The granting of development approval under the *Planning Act 2002* for a use or development of land does not of itself—

- (a) authorise an activity for which under this Act a permit is required; or
- (b) require that a permit be granted.

PART 2 — PERMITS**Application for permit to take protected trees**

6. (1) The occupier or, where there is no occupier, the owner of land on which a protected tree is situated, may apply to the executive member for a permit to take that protected tree.

(2) An application under subsection 6(1) shall —

- (a) be in the approved form and signed by the applicant; and
- (b) be accompanied by the prescribed fee; and
- (c) specify —
 - (i) the tree, group of trees or class of trees; and
 - (ii) the area of land on which the tree, group of trees or class of trees is growing; and
 - (iii) the reason for the taking of the tree, group of trees or class of trees,

¹ Subsection 43(h) of the *Planning Act 2002* requires the executive member to consider, in relation to a development application any matter required by any other enactment to be considered in relation to an approval of the kind sought.

in respect of which the permit is sought.

(3) The executive member may require an applicant to provide such further information in relation to the application as the executive member considers necessary.

Inspection

7. An application under subsection 6(1) is taken to be consent by the occupier of the land for an authorised officer to enter, at all reasonable times, and to inspect the specified tree or trees.

Consideration of application for permit

8. (1) In considering an application for a permit, the executive member shall take into account —

- (a) the objectives of the Act; and
- (b) the maturity and health of the protected tree; and
- (c) the effect of the taking of the protected tree —
 - (i) on the environment of the area; and
 - (ii) on the density of trees in the area; and
- (d) the necessity or desirability of taking the protected tree —
 - (i) for the improvement of land used for the purposes of agriculture, grazing or forestry; or
 - (ii) to permit the construction of a road, path or track, the laying of a drain, sewer or pipe or the erection of an overhead cable or wire; or
 - (iii) for the reason that the tree obstructs, or prevents access to, the proposed erection of a building that is permitted under the *Building Act 2002*; or
 - (iv) for the reasonable domestic requirements of the owner or occupier of the land on which the tree is situated; and
- (e) the site or the condition of the protected tree in relation to the safety of people or animals or buildings or other structures; and
- (f) such other matters as he or she thinks fit.

Grant of permit

9. (1) After considering an application and any further information provided in accordance with a request made under subsection 6(3), the executive member shall —

- (a) grant and issue a permit to the applicant; or
- (b) refuse to grant a permit.

(2) Where the executive member refuses under paragraph 9(1)(b) to grant a permit, he or she shall, as soon as practicable, inform the applicant of the refusal by notice in writing specifying the reason for the refusal.

(3) A permit granted under subsection 9(1) is subject to such conditions as are prescribed or as are endorsed on the permit.

(4) It is a condition of the grant of a permit that the holder of the permit allow an inspection by an authorised officer after the taking of the tree that is the subject of the permit.

(5) Notification of grant of a permit under subsection 5(1) shall be published in the Gazette.

PART 3 — PLANTATIONS**Application for registration of plantation**

10. (1) A person may apply to the executive member to have an area of land registered as a plantation.

(2) An application under subsection 10(1) shall —

- (a) be in the approved form and signed by the applicant; and
- (b) be lodged with an authorised officer; and
- (c) be accompanied by the prescribed fee; and
- (d) state the full name and address of the applicant; and
- (e) specify the area of land proposed as the plantation; and
- (f) specify the number and species of trees to be planted; and
- (g) contain such other information as is prescribed.

(3) An authorised officer may enter and inspect an area of land that is the subject of an application under subsection 10(1), for the purpose of making a report to the executive member in respect of the application.

Guidelines for registration of plantation

11. (1) The executive member shall determine guidelines to be applied for the purpose of determining whether an area of land should be registered as a plantation.

(2) Guidelines made under subsection 11(1) are a disallowable instrument

Determination of application

12. (1) An application under subsection 10(1) to have a plantation registered shall be decided by the executive member in accordance with guidelines made under subsection 11(1).

(2) A decision under subsection 12(1) shall be communicated in writing to the applicant within 14 days of the making of the decision.

Registration of plantation

13. (1) An authorised officer shall maintain a register of plantations.

(2) Where the executive member decides to register a plantation he or she shall advise an authorised officer to enter the details of that plantation, together with any conditions attached to that registration, in the Register.

(3) An authorised officer shall issue to a successful applicant a registration certificate setting out the details of registration of the plantation and any conditions attached to that registration.

(4) The Register shall be open for inspection during normal business hours.

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PART 4 — TIMBER LICENCES**Application for timber licence**

16. (1) A person may apply to the executive member for a timber licence to cut timber on, and obtain and remove timber from, unleased Crown land during a specified period.

(2) An application under subsection 16(1) cannot be made in respect of protected trees.

(3) An application under subsection 16(1) shall —

- (a) be in the approved form and signed by the applicant; and
- (b) be accompanied by the prescribed fee; and
- (c) specify the area of land where the timber is situated.

(4) The executive member may require an applicant to provide such further information in relation to the application as the executive member considers necessary.

Grant of timber licence

17. (1) After considering an application and any further information provided in accordance with a request made under subsection 16(4) the executive member shall —

- (a) grant and issue a timber licence to the applicant; or
- (b) refuse to grant a timber licence.

(2) In considering whether to grant a timber licence, the executive member shall have regard to the objects of the Act and any other considerations that he or she considers relevant.

(3) Where the executive member refuses to grant a timber licence under paragraph 17(1)(b), he or she shall, as soon as practicable, inform the applicant by notice in writing setting out the reasons for that decision.

Conditions attached to timber licence

18. (1) A timber licence granted under subsection 17(1) shall be subject to such conditions as are prescribed or as are endorsed on the licence.

(2) Without limiting the generality of subsection 17(1), a condition may —

- (a) restrict a licence to any particular land or locality; and
- (b) restrict a licence to particular trees; and
- (c) operate for a specific period; and
- (d) impose such other requirements as the executive member thinks are appropriate.

Imposition of royalty

19. (1) Any timber cut, obtained or removed from unleased Crown land is subject to the payment of royalty at the prescribed rate on the quantity of timber cut, obtained or removed.

(2) The executive member may remit in whole or in part the payment of royalty under subsection 19(1).

Logs upon which royalty due

20. Unless by authority in writing of the executive member, no logs upon which royalty is due shall be removed from unleased Crown land or measured or split into marketable timber until measured and branded by an authorised officer.

Production of timber licence

21. A separate timber licence must be held by each person cutting or removing timber upon, or from, unleased Crown land, and the licence must be produced on the demand of an authorised officer.

Seizure of timber

22. (1) Timber felled on unleased Crown land but not removed within 3 months may be seized by an authorised officer and shall, on the direction of the executive member, be forfeited to the Administration and sold or otherwise disposed of.

(2) Notice of a seizure under subsection 22(1) shall be published in the Gazette 7 days before the sale of the timber so that the persons interested may claim and establish legal ownership.

Authority in respect of pine cones, pine knots and pine seeds

23. Pine cones, pine knots and pine seeds shall not be collected on unleased Crown land without the written authority of the executive member and the payment of the prescribed fee.

Penalty: 5 penalty units.

PART 4A — ENFORCEMENT*Division 1 — Sanctions***Stop order about protected trees**

23A. (1) This section applies where an authorised officer suspects on reasonable grounds, a person (the “offending person”) is

taking, causing to be taken or intends to take or cause to be taken a protected tree without being the holder of a permit in respect of that tree.

(2) The authorised officer may by written notice (a “stop order”) to the person whom the authorised officer believes on reasonable grounds is the offending person order that the tree is not to be taken.

(3) The authorised officer shall, as soon as practicable, give the Chief Executive Officer a copy of the stop order.

(4) If a person to whom the stop order is given is not the owner of the land where the tree is, the authorised officer shall, as soon as practicable, give the owner a copy of the stop order.

(5) Failure to comply with subsections 23A(3) and 23A(4) does not affect the validity of a stop order.

Compliance with stop orders

23B. The offending person and the owner of the land shall ensure that the stop order is complied with.

Penalty:

- (a) if the offender is an individual — 10 penalty units or imprisonment for 3 months, or both; and
- (b) if the offender is a body corporate — 30 penalty units.

Copies of stop orders to be available for inspection

23C. (1) The copies of stop orders given to the Chief Executive Officer under subsection 23A(3) shall be available for public inspection.

(2) In this section —

“stop order” includes a stop order as confirmed, revoked or modified on appeal.

Documentary evidence

23D. In any civil or criminal proceedings, a copy of a stop order under subsection 23A(2), is evidence —

- (a) that the stop order was given; and
- (b) of the contents of the stop order.

False information

23E. (1) A person shall not knowingly make a false or misleading statement in connection with an application for a permit or for registration of a plantation by that person or any other person.

(2) A person shall not make a false or misleading statement with the intention of misleading a person performing a function under this Act.

Penalty: 20 penalty units or imprisonment for 3 months, or both.

Division 2 — Powers of entry and search

Powers of entry

23F. (1) An authorised officer may enter a place for the purposes of this Act in any of the following circumstances —

- (a) with the consent of an occupier of the place;
- (b) if the place is open to the public, whether or not on payment of a fee;
- (c) in accordance with an entry order under section 23G;
- (d) in accordance with a search warrant under section 23H.

(2) However, an authorised officer may enter a place without the consent of the occupier of the place where the authorised officer suspects on reasonable grounds that a protected tree is being or is about to be taken at the place in contravention of this Act.

(3) An authorised officer shall not enter or remain in a place unless —

- (a) if the entry is pursuant to an entry order — the officer produces the order;
- (b) if the entry is pursuant to a search warrant — the officer produces the warrant; or
- (c) in any other case — the officer produces his or her instrument of appointment, or a copy of that instrument.

(4) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent, or an entry order or a warrant —

- (a) enter land around the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(5) Entry of a place by an authorised officer for an inspection under section 7 or subsection 9(4) is taken to be with the consent of the occupier of the place.

Entry orders

23G. (1) On information on oath given by an authorised officer, a Magistrate may issue an entry order in relation to a place if satisfied on reasonable grounds that —

- (a) it is reasonably necessary for the officer to enter the place for the purposes of this Act;
- (b) the entry is not for the purpose of seizing any thing referred to in subsection 23H(1);
- (c) the entry cannot reasonably be effected except in accordance with an entry order; and
- (d) the purpose of the entry cannot reasonably be achieved without an entry order.

(2) An entry order authorises the specified authorised officer to enter a specified place, and to inspect the place, with such assistance and by such force as is necessary and reasonable.

(3) An entry order does not authorise the seizure of any thing.

Search warrants

23H. (1) On information on oath given by an authorised officer, a Magistrate may issue a search warrant in relation to a place if satisfied on reasonable grounds that —

- (a) any thing in relation to which an offence has been committed is in that place, or will be there within the following 72 hours; or
- (b) any thing which will afford evidence as to the commission of an offence is in that place, or will be there within the following 72 hours; or
- (c) any thing intended to be used for the purpose of committing an offence is in that place, or will be there within the following 72 hours.

(2) A search warrant authorises the specified authorised officer to enter the specified place at any time, and to seize any thing of the type specified in the warrant, with such assistance and by such force as is necessary and reasonable.

(3) An authorised officer may break open doors and receptacles for the purpose of executing a search warrant, where it is necessary and reasonable to do so.

(4) In this section —

“offence” means an offence against this Act which there are reasonable grounds to suspect has been, or is about to be, committed.

Inspection of places

23I. (1) An authorised officer who lawfully enters a place under this Division, may —

- (a) inspect the place and any article, matter or thing in or on the place; and
- (b) take measurements of trees and of distances, including of trees to structures and boundaries; and
- (c) require any person at the place to answer questions or otherwise furnish information in relation to the matter the subject of the inspection or investigation; and
- (d) take samples or photographs in connection with any inspection; and
- (e) require the occupier of the place, or a person at the place, to give the authorised officer reasonable help to exercise the authorised officer’s powers under paragraphs 23I(1)(a) to 23I(1)(c).

(2) When making a requirement mentioned in paragraph 23I(1)(c) or 23I(1)(e), the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

Failure to comply with requirement

23J. (1) A person of whom a requirement is made under paragraph 23I(1)(c) or 23I(1)(e) must comply with the requirement, unless the person has a reasonable excuse.

Penalty: 10 penalty units.

(2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement may tend to incriminate the individual.

PART 5 — MISCELLANEOUS

Review of decisions

24. Application may be made to the Administrative Review Tribunal for the review of the following decisions —

- (a) a decision under section 9 to refuse to grant a permit or to endorse conditions on a permit;
- (b) a decision under section 12 to refuse to register a plantation;²
- (c) a decision under section 17 to refuse to grant a timber licence or a decision under section 18 to endorse conditions on a timber licence.

Authorised officers

25. (1) The executive member may, by instrument in writing, appoint persons to be authorised officers for the purposes of this Act and the Regulations.

(2) The executive member shall issue to each person appointed to be an authorised officer under subsection 25(1) an identity card specifying the officer's name and address.

(3) An authorised officer who enters land for the purposes of this Act is not authorised to remain on the land if, on request by the occupier of the land for production of the identity card issued under subsection 25(2), the authorised officer fails to produce it.

Delegation

26. (1) The executive member may, by instrument in writing, delegate to any person any of his powers and functions under this Act, other than his powers and functions under section 27 and this power of delegation.

²The words "a decision under section 14 to impose or vary conditions on the registration of a plantation or a decision under section 15 to revoke the registration of a plantation" have been omitted as sections 14 and 15 were repealed by Act No. 7 of 1999.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the executive member.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the executive member.

Delegation by Chief Executive Officer

26A. (1) The Chief Executive Officer may, by instrument, delegate any of the functions or powers of the Chief Executive Officer under this Act other than this power of delegation.

(2) A delegation under subsection 26A(1) may be made —

- (a) to a specified person; or
- (b) to the holder for the time being of a specified office or position.

(3) A delegate, in making a decision in accordance with a delegation under this section, shall comply with the requirements of this Act which the Chief Executive Officer is required to comply with in making such a decision.

Statement as evidence

27. In proceedings for an offence against this Act or the Regulations, a statement signed by the executive member that a copy of —

- (a) an application for a permit or timber licence; or
- (b) a permit or timber licence,

is a true copy, is evidence of the matters stated in the application, permit or licence.

Offences

28. (1) Subject to subsection 28(7), a person who takes or causes to be taken a protected tree other than a tree that is within a registered plantation without being the holder of a permit in respect of that tree is guilty of an offence.

(2) It is a defence to a charge of an offence against subsection 28(1) if the defendant proves that he or she took a protected tree at the direction of a person who was the holder of a permit in respect of that tree.

(3) A person who cuts timber on, or obtains and removes timber from, unleased Crown land without being the holder of a timber licence in respect of that timber is guilty of an offence.

(4) It is a defence to a charge of an offence against subsection 28(3) if the defendant proves that he or she cut, obtained or removed the timber at the direction of a person who was the holder of a timber licence in respect of that timber.

(5) A person shall not hinder or obstruct an authorised officer performing a function under this Act.

(6) A person shall not contravene or fail to comply with a condition of a permit or timber licence.

Penalty for a contravention of subsections 28(1), (3), (5) or (6): 10 penalty units or imprisonment for 3 months, or both.

(7) A person is not required to have a permit —

- (a) to top, lop or trim a tree in accordance with good silvicultural practice; or
- (b) to take a tree if any part of the trunk of the tree, at the point where it rises from the ground, is not more than 3 metres from a building; or
- (c) to remove a part of a tree that overhangs the roof of a building.

Protecting officials from liability

29. (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection 29(1) prevents a civil liability attaching to an official, the liability attaches instead to the Administration.

(3) In this section —
“official” means —

- (a) the executive member; or
- (b) the Chief Executive Officer;
- (c) an authorised officer;
- (d) an employee within the meaning of the *Public Sector Management Act 2000*.

Regulations

30. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection 30(1), Regulations may be made prescribing —

- (a) species of protected trees; and
- (b) species of protected trees and the height at which those trees become protected; and
- (c) methods of measuring trees; and
- (d) forms for matters referred to in this Act; and
- (e) conditions of permits.

Effect of documents being “available for public inspection”

30A. (1) Where a provision of this Act states that any document shall be available for public inspection, the Chief Executive Officer shall ensure that the document is available for public inspection free of charge at the offices of the Administration determined by the Chief Executive Officer during usual business hours.

(2) On application by any person accompanied by the prescribed fee, the Chief Executive Officer shall ensure that a copy of a document, or an extract from a document that is available for public inspection, is made available for purchase by the person.

Repeal

- 31. (1)** The *Trees (Preservation) Act 1985* is repealed.
- (2)** The *Timber Licences Act 1913* is repealed.
- (3)** The *Trees (Preservation) Amendment Act 1995* is repealed.

Saving of existing licences, permits and registration

32. (1) Subject to the Regulations, an existing permit that authorised a person to take, or cause to be taken, a protected tree, is deemed to be a permit issued under this Act and continues to authorise the person to take, or cause to be taken, the protected tree.

(2) Subject to the Regulations, an existing timber licence or authority that authorised a person to cut timber on, or obtain and remove timber from, unleased Crown land, is deemed to be a timber licence or authority issued under this Act and continues to authorise the person to cut timber on, or obtain and remove timber from, unleased Crown land.

.....

(4) In this section —

“existing permit” means a permit that was granted under the *Trees (Preservation) Act 1985* and that was in force immediately before the commencement of section 31;

.....

“existing timber licence or authority” means a timber licence or authority that was granted under the *Timber Licences Act 1913* and that was in force immediately before the commencement of section 31.

(5) Any condition to which an existing permit or existing timber licence or authority was subject is, subject to the Regulations, taken to be a condition imposed under the Act and any such condition may be changed or revoked in accordance with this Act.

Savings and transitional Regulations

33. (1) The Regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such savings or transitional provision may, if the Regulations so provide, take effect on the date of Assent to this Act or a later day.

NOTE

Penalty units

See section 12A of the *Interpretation Act 1979*

NOTES

The *Trees Act 1997* as shown in this consolidation comprises Act No. 16 of 1997 and amendments as indicated in the Tables below.

| Enactment | Number and year | Date of commencement | Application saving or transitional provision |
|---|------------------------|-----------------------------|---|
| <i>Trees Act 1997</i> | 16, 1997 | 29.4.99 | |
| <i>Trees Amendment Act 1999</i> | 7, 1999 | 29.4.99 | 10 |
| <i>Trees Amendment Act 2002</i> | 6, 2002 | 27.2.04 | |
| <i>[Previously consolidated as at 7 April 2004]</i> | | | |
| <u><i>Trees (Amendment) Act 2008</i></u> | <u>10, 2008</u> | <u>27.6.08</u> | <u>s. 4 deemed to have effect from 4.12.02</u> |

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

| Provisions affected | How affected | |
|----------------------------|---------------------|------------------|
| 5 | am | 7, 1999; 6, 2002 |
| 5A | ad | 6, 2002 |
| 7 | rs | 6, 2002 |
| 8(1)(d)(iii) | am | 6, 2002 |
| 9(5) | rs | 6, 2002 |
| | <u>am</u> | <u>10, 2008</u> |
| 14 | rep | 7, 1999 |
| 15 | rep | 7, 1999 |
| 18 | am | 7, 1999 |
| 23A | ad | 6, 2002 |
| 23B | ad | 6, 2002 |
| 23C | ad | 6, 2002 |
| 23D | ad | 6, 2002 |
| 23E | ad | 6, 2002 |
| 23F | ad | 6,2002 |

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

| <u>Provisions affected</u> | | <u>How affected</u> |
|----------------------------|-----|---------------------|
| 23G | ad | 6, 2002 |
| 23H | ad | 6, 2002 |
| 23I | ad | 6, 2002 |
| 23J | ad | 6, 2002 |
| 24 | am | 7, 1999 |
| 26A | ad | 6, 2002 |
| 28(3) | am | 7, 1999 |
| 28(6) | am | 7, 1999 |
| 28(7) | rs | 7, 1999 |
| 29 | rs | 6, 2002 |
| 30A | ad | 6, 2002 |
| 31 | am | 7, 1999 |
| 31(3) | ad | 7, 1999 |
| 32(3) | rep | 7, 1999 |
| 32(4) | am | 7, 1999 |
| 32(5) | am | 7, 1999 |

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