

Tree protection laws in Australian states and territories

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Introduction

The laws which protect vegetation from damage and clearance across states and territories in Australia vary considerably. What they share in common is that as Acts of Parliament (and Regulations) they are promulgated by state and territory parliaments.

At the start of my research, I thought that most states and territories had blanket laws aimed at protecting trees on private land. In fact, most don't! Even where they do exist, they rely heavily on local government to administer them.

I did not intend for this report to canvas conservation laws, however for the sake of completeness they need to be included, and form an important part of protecting ecological communities in the so-called "public estate" (that is, our system of national parks and reserves) and on private property. In those jurisdictions without state or local government tree protection laws, the only protection for trees generally relies on conservation legislation.

A quick word on Acts versus Regulations. Regulations (or "Regs") are known as "subordinate legislation" because they rely on the existence of an Act of Parliament, which is considered a superior instrument. An Act must pass both houses of parliament (not relevant in Queensland, the ACT or NT) and therefore requires the political support of both houses of parliament (not always a simple process because government often don't control their upper houses – they rely on the support of the opposition or minor parties and independent Members). Individual clauses in a Bill (the precursor to an Act) can be amended by either house of parliament; regulations cannot, they can only be "disallowed", in which Parliament can vote them down without amending them. The terms "legislation", "regulations", "laws" etc are often used interchangeably, even though their precise meanings are more nuanced.

Hierarchy - categories of vegetation and levels of protection

Vegetation and tree protection laws can be categorised based on the aims of the legislation, the location of the plant species and whether it is part of an indigenous/native ecological community, whether it may have heritage or a variety of other attributes, such as amenity, girth size, canopy size, height etc.

The highest level of protection is provided for plants located in national parks ("the public estate"). With so much of Australia's landscape having been cleared since European settlement, conservation parks provide a refuge for ecological communities through protection of native flora and fauna. These sets of laws aim to prevent human interference with the balance of the natural landscape by prohibiting the taking of any plants or animals from their environment; while simultaneously seeking to exclude pest species. The sale of flora and fauna is illegal and legitimate handling is enabled through permit systems, for instance for native species nurseries or wildlife rescue operations. There are significant penalties for breaking these laws and parks have their own police force in park rangers to enforce the laws. All states and territories have parks laws.

The next level is protection of native vegetation on private land, with similar goals of preserving remnant habitats to conserve biodiversity. These laws protect indigenous tree species, and also shrubs and bushes and to a lesser extent, grasses, sedges etc (everything below the canopy). Native vegetation laws have common themes across states and territories, and prohibit pruning, burning or destruction without the permission of the relevant state or territory authority. They generally apply only in rural areas, excluding capital cities and other parts which are zoned as residential, townships, industrial etc. There are significant penalties for breaking these laws. All states and territories have such laws, with the exception of the Northern Territory.

Indigenous plant species may also receive additional protection through s266B of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* when considered threatened, endangered or vulnerable.

Other laws which may protect trees are available through heritage and/or Aboriginal heritage legislation. The common themes of these acts is that there is a State-based statutory authority which assesses and administers the nomination and registration process, with penalties for damage and destruction of the heritage "item"/"area"/"place". Not all of the relevant Acts specifically include a reference to "tree" or "trees" in being an item or forming part of an area or place however this does not seem to affect whether trees can be listed or not.

There are also laws in some jurisdictions which focus on “significant” trees (not just native species), heritage protection of trees (again not just native) and indigenous trees.

Only two jurisdictions have specific statutes to provide blanket protection to native and non-native tree species on private land – the ACT and SA. Other jurisdictions enable local government through their relevant planning Acts to create registers, lists, “overlays” (Victoria), or by-laws, “local laws” or local planning instruments to specifically provide for the protection of trees in the landscape.

Common themes in tree laws across Australia, regardless of whether they are a State statute or a local government instrument, include:

- declared pest species are exempt from protection, and
- pruning of protected trees is permitted if it is for maintenance (or in the best interests of the tree).

Criteria to determine which trees should be protected vary greatly. Many councils have registers of significant trees, to which members of the public may make nominations.

ACT Tree Protection Act 2005

The hybrid jurisdiction of the ACT has the most detailed 100-page tree-specific legislation. The objects section of the Act states that it exists to protect both individual trees and the urban forest, as well as to promote community appreciation of trees.

The Act recognises trees under two sets of circumstances which provide similar levels of protection:

1. “Registered” trees which have been placed on the register because of their individual importance. A list and description of regulated trees can be found at: http://www.tams.act.gov.au/live/environment/treeprotection/acttreeregister/registered_trees The registration process is similar to heritage nomination.
2. “Regulated” trees, are those trees (regardless of species, unless a declared pest) which meet certain criteria and are located in a declared Tree Management Precinct (which is most of Canberra, according to <http://www.legislation.act.gov.au/ni/2010-414/>):
 - are 12 or more metres high;
 - have a trunk with a circumference of 1.5 metres or more, one metre from the ground;
 - have two or more trunks and the sum of their individual circumferences at 1 m above ground is 1.5 m or more; or
 - have a canopy 12 m or more wide.

Trees which fall into one of these categories cannot be damaged without approval. The definition of damage includes: killing, destroying, felling, removing, ring barking, lopping, pollarding, poisoning, *major pruning*, or anything else that causes the tree to die, reduces its expected life span or significantly and adversely affects the tree’s health.

“Minor pruning” is permitted without approval. For regulated trees minor pruning means pruning (other than lopping or pollarding) performed in accordance with the Australian Standard on Pruning, AS 4373, that does not affect the general appearance of the tree or if it is a fruit tree, if it is done in accordance with the Standard and is done for fruit production [s.13(2)(b)].

For registered trees, minor pruning means pruning (other than lopping or pollarding) conducted in accordance with AS 4373 that is limited to:

- removing deadwood;
- removing limbs with of a diameter of 50 mm or less; or
- the first pruning of the tree in the calendar year, which affects less than 10 per cent of the canopy and does not change the overall shape of the canopy.

Uniquely, certain groundwork is prohibited without approval within the tree protection zone (deemed to be under the canopy of the tree, within a two metre radius out from the canopy, within a four metre radius surrounding the trunk as measured at one metre above natural ground level or as defined in a tree management plan for the tree).

Prohibited activities include:

- changing the soil level (except for the preparation of garden beds, the planting of trees and shrubs or other cultivation for horticultural purposes);
- contaminating the soil; or
- cutting any roots with a diameter of greater than 50 mm.

The authority for registration, approvals and the issuing of tree protection directions is the Conservator of Flora and Fauna, who is backed up by a Tree Advisory Panel.

Penalties for offences range from 50-400 “penalty units” (currently for an individual \$5,500- \$44,000 or for an offence committed by a corporation \$27,500-\$220,000).

SA significant tree clauses within the Development Act 1993

South Australia’s Development Act defines “damage¹ to a regulated tree” as “development” for the purposes of the Act, in order for activities to be controlled.

It makes the distinction between two categories of trees located in the Adelaide metro area and the Adelaide Hills as “regulated” and “significant”. These are defined in the Regulations as:

- Regulated – trunk circumference of 2+ metres at one metre above ground level (for multiple trunks, the average circumference of each is 625+mm)
- Significant – trunk circumference of 3+ metres at one metre above ground (for multiple trunks, the average circumference of each is 625+mm)

Any activity which is “maintenance pruning”² does not require approval, nor does pruning for powerlines or for trees planted for orchards or woodlots. Approval for any other removal or destruction requires advice to be provided through “an expert or technical report”, for which the minimum qualification is Cert V in Horticulture (arboriculture). If the “killing, destruction or removal” of a tree is approved:

- Two trees are required to be planted for a regulated tree;
- Three trees are required to be planted for a significant tree, OR
- \$75 per tree removed is to be paid into the local council’s Urban Tree Fund, which may be applied to either the planting of trees which will become significant, or the purchase of land for the planting of trees which will become significant

Penalties apply up to \$60,000.

Exemptions

- Any tree which is located within 10 metres of an existing dwelling or existing in ground- swimming pool is fair game unless it is an *Agonis flexuosa* (Willow Myrtle) or any species of *Eucalyptus*.
- Any tree which is within 20 metres of a dwelling in a medium or high risk bushfire area is fair game (large slabs of the Adelaide Hills).
- Any declared pest plant is fair game, as are any on this “hit list”:

Acer negundo (Box Elder)
Acer saccharinum (Silver Maple)
Ailanthus altissima (Tree of heaven)
Alnus acuminata subsp. *Glabrata* (Evergreen Alder)
Celtis australis (European Nettle Tree)
Celtis sinensis (Chinese Nettle Tree)
Cinnamomum camphora (Camphor Laurel)

¹ “tree damaging activity” includes the killing or destruction of a tree, the removal of a tree, the severing of branches, limbs, stems or trunk of a tree, ringbarking, topping or lopping of a tree or any other substantial damage.

² means that no more than 30% of the crown is removed, and the removal is done for the purposes of removing dead wood, diseased wood and potentially unsafe branches

Cupressus macrocarpa (Monterey Cypress)
 Ficus spp. (Figs), other than Ficus macrophylla (Moreton bay fig) located more than 15 metres from a dwelling
 Fraxinus angustifolia (Narrow-leaved Ash)
 Fraxinus angustifolia ssp. Oxycarpa (desert ash)
 Lagunaria patersonia (Norfolk Island Hibiscus)
 Melaleuca styphelioides (Prickly-leaved Paperback)
 Pinus Radiata (Radiata Pine / Monterey Pine)
 Platanus x acerifolia (London Plane)
 Populus alba (White poplar)
 Populus nigra var. italica (Lombardy Poplar)
 Robinia pseudoacacia (Black Locust)
 Salix babylonica (Weeping Willow)
 Salix chilensis 'Fastigiata' (Chilean Willow, Evergreen Willow, Pencil Willow)
 Salix fragilis (Crack Willow)
 Salix X rubens (White Crack Willow, Basket Willow)
 Salix X sepulcralis var. chrysocoma (Golden Weeping Willow)
 Schinus areira (Peppercorn Tree)

Individual local Council development plans may also declare individual trees and stands of trees to be significant. This relies on councils identifying and lodging DPAs with the Minister for Planning, and only the Cities of Adelaide, Burnside, Prospect and Unley have taken this option.

Victorian planning and local government laws delegate to local government

Vegetation is most commonly managed under the State's Victorian Planning Provisions (VPP), and at a local government level through Vegetation Protection Overlays (VPOs). 52 of the 82 local councils use Vegetation Protection Overlays (VPOs) to manage their tree populations whereby each individual council will specify local vegetation for protection in a schedule (which requires Ministerial approval). Vegetation in the schedule may include trees, stands of trees or areas of significant vegetation.

There is nothing in the VPP that defines a significant tree. Councils are individually responsible for determining this. The reason for this relates to the aesthetic and heritage value of the tree species native to the council area in question. Each council will set its girth threshold to determine 'what is a significant tree?' at a level which will allow for protection of trees that are desirable for the district.

Other overlays in Victoria include Environmental Significant Overlay, Significant Landscape Overlay, Heritage Overlays, Erosion Management Overlay and Salinity Management Overlay. The National Trust advocates for the use of Heritage Overlays in local government planning scheme to protect trees.

As an alternative to instruments within the VPP, councils may create a local law under the *Local Government Act 1989* to protect vegetation. For instance, the City of Bayside Environmental Local Law No. 2 protects identified significant trees on its significant tree register or existing tree canopies on private properties for their amenity value.

Regardless of which instrument is used by councils, significant tree registers are usually created after conducting a council-wide survey and alerting the owner if the tree occurs on private land. Anyone may nominate trees or vegetation for inclusion. The register is then published, complete with reasons for each tree's inclusion, with photographs and comments about how to best manage the tree for optimal health. The schedules include a definition of a significant tree. In all 52 councils girth size was used to help determine a tree's significance, which vary from as narrow as 400mm to 3500mm.. All 52 councils however use a combination of methods such as:

- Canopy size
- Prescribed lists (approximately 50% of councils had a significant tree list)
- Heritage value
- Aesthetic value

Permits are required prior to removal, destruction or lopping.

Penalties for breaches are through infringement notices and minor penalties, with larger fines for breaches of court orders. This regime has come under criticism because the largest fines only occur once it has come to the attention of authorities that damage or destruction has taken place and an order has been made, in other words, "after the horse has bolted"³. Victoria could consider whether fines are adequate and whether the State government should play a role rather than leaving the action to councils to prosecute.

New South Wales planning provisions delegated to local government

In Sydney and areas zoned "residential", "village", "township", "industrial" or "business", it is the responsibility of local councils to manage tree populations and there is not a uniform system in place as each council forms its own planning guidelines. Councils have two tools to manage trees in NSW – Tree Preservation Orders (TPOs) and Local Environment Plans (LEPs).

LEPs allow for the incorporation of significant tree registries but this is not compulsory. A majority of councils have significant tree registries.

The cities of Gosford, Randwick, Manly, Sydney and the Sutherland Shire all use the following policy guidelines to determine the significance of trees:

- Landscape amenity
- Historical importance
- Botanical importance

Gosford, Manly and the Sutherland Shire have the additional guidelines of:

- Aboriginal importance
- Functional purpose (shade, habitat, avenue windbreaks)

I am advised by the NSW Planning department that girth and canopy sizes are not used as guidelines to determine a significant tree.

In addition to LEPs councils and shires use TPOs to control the pruning and removal of trees that are not listed as significant. TPOs apply to native and non-native species. I surveyed 10 councils in the metropolitan area and 10 in the regions and all listed the height and canopy size of a tree as the guidelines of protection. Girth size was not used

An example:

Trees more than 3 metres high, or with a crown of more than 2 metres will require a permit to remove.

Most councils did not vary too much from this example. Gosford lowered its height limit to 2 metres but generally 3 metres is widely accepted.

Pruning of no more than 1/3 of the canopy (NOT the trunk) is uniformly allowed across the state.

The NSW Government has introduced a new Standard Instrument LEP "Preservation of trees or vegetation" (5.9) to encourage the standardisation of LEPs across local council areas and replace individual TPOs. The objective of the standard is "to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation". It applies to "species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council". Councils may prescribe the trees or other vegetation by reference to species, size, location or other manner.

The standard LEP makes it illegal to ringbark, cut down, top, lop, remove, injure or wilfully destroy any prescribed trees or other vegetation without permission (pest species are exempt).

The maximum penalty for breach of a TPO in a Local Court is \$110,000. The maximum penalty in the Land and Environment Court is \$1.1 million.

³ A recent case of a developer in Toorak resulted in a fine of \$5,000 plus court costs of \$8,000.

NOTE: The NSW legislation actually allows for either State or Local government to make orders regarding tree management yet it's not compulsory for either to do so. There seems to be an agreement with respect to cost sharing that councils manage the state's trees but there is no legal obligation for them to do so.

Western Australia – planning provisions also delegated to local government

Obtaining comprehensive information about WA "laws" difficult because it is delegated to local government, and those schemes are neither easy to find nor consistent with one another. Their "laws" often include trees on public land as well as private trees (which would be at greater risk).

Registers of significant trees and "tree preservation orders" can be identified by local councils through their local planning schemes, which are enabled through Part 5 of the *Planning and Development Act 2005* (although the Act does not specifically refer to significant trees).

Uniquely, all councils in WA appear to use significant tree registers. Criteria include size⁴ (height, canopy and girth) as well as heritage and indigenous/native value, however criteria do vary across Councils.

Some Councils have elaborate criteria, such as the **City of Mandurah**:

1. Outstanding Visual/Aesthetic Significance
 - a) Tree/s that is outstanding for its/their height, trunk circumference or canopy spread;
 - b) Tree/s that occur in a prominent location or context;
 - c) Tree/s that contribute significantly to the landscape in which it/they grow (including streetscapes, parks, gardens or natural landscapes);
 - d) Tree/s that exhibit an unusual growth form or physical feature, including unusually pruned forms; or
 - e) Tree/s that are particularly old or vulnerable.
2. Botanic/Scientific Significance
 - a) Tree/s that are of an important genetic value that could provide important and valuable propagating stock. This could include specimens that are particularly resistant to disease or climatic extremes or have a particular growth form; or
 - b) Tree/s that demonstrate a likelihood of producing information that will help the wider understanding of natural or cultural history by virtue of its use as a research site, teaching site, type locality or benchmark site.
3. Significant Ecological Value
 - a) Priority, rare, threatened or locally uncommon species or ecological community;
 - b) Indigenous remnant tree/s that predate the urban development in its immediate proximity;
 - c) Tree/s that make a significant contribution to the integrity of an ecological community, including its role as a seed source or specialised habitat;
 - d) A remnant specimen now reduced in range or abundance, which indicates the former extent of the species, particularly range limits; or
 - e) Tree/s which is a significant habitat element for rare, threatened, priority or locally uncommon or common native species.
4. Historical, Commemorative, Cultural or Social Significance
 - a) Tree/s that are associated with public significance or important historical event;
 - b) Tree/s highly valued by the community or cultural group for reasons of strong religious, spiritual, cultural or other social associations, including trees associated with aboriginal heritage and culture;
 - c) Tree/s associated with a heritage listed place and representative of that same historic era; or
 - d) Tree/s that have local significance, are important to the local community and/or are recognised features of the immediate landscape

The City of **South Perth** uses the National Trust's criteria.

Pruning of more than 1/3 of the canopy is not permitted.

Penalties exist for any breach of a planning scheme (s. 218) of *Planning and Development Act 2005*: The "General penalty" is "a fine of \$200 000 and, in the case of a continuing offence, a further fine of \$25 000 for each day during which the offence continues" (s 223), or an infringement notice fee of \$500 (s 42 of the *Planning and Development*

⁴ Of 20 councils surveyed by my office, none used set guidelines for size, preferring to judge each on a case-by-case basis.

Regulations 2009). The likelihood of the general penalty provision being used for an individual tree is probably minimal and there was little information about the issuing of infringements or any examples of prosecutions.

A petition to the WA Parliament's Standing Committee on Environment and Public Affairs in 2007 resulted in a recommendation that a model tree policy be developed, however this has not occurred and the policies remain with local government authorities.

Tasmania – protection through planning provisions

Tree protection in Tasmania is similar to NSW and WA, that is, its planning legislation (*Land Use Planning and Approvals Act 1993*) enables councils to establish Planning Schemes to control land use and vegetation. Of its 29 councils, the majority have significant tree registers, some of which have tree protection orders, for which a permit is required to remove or prune a tree. Councils generally advise residents to seek council permission prior to removing trees on their properties, unless it is close to a house, a fire risk, causing problems with drainage, or is diseased.

Councils have a wide variety of approaches to significant trees:

- Hobart City Council used National Trust criteria when it established the list, and has since put out several public calls for nominations
- Kingsborough Council has used Royal Tasmanian Botanical Gardens criteria, that is trees must fit at least one of the following criteria: tree size and/or age, aesthetic beauty, rarity, unusual physical form, historical significance or landscape significance.
- A council which doesn't use a list, the Derwent Valley Council, in contrast to the above examples simply requires a permit to remove a tree more than 3 metres tall, regardless of species. If the tree poses a bushfire danger the tree can be removed.

Tasmania has fines of up to \$10,000.

Queensland – protection through Local Government Act 1993 “local laws”

Tree management in Queensland is very complex as Councils have their own local laws with different criteria for recognition. A reform process to develop template “model local laws”, however none has been developed yet for trees and/or vegetation. Furthermore, regardless of whether trees are indigenous or not, they are often classed as “vegetation” (as distinct from native vegetation).

Queensland's Department of Local Government provides an online database of local laws at:

<http://www.dsdlip.qld.gov.au/local-government/local-laws-online.html>, which shows the diversity of classifications and laws which apply. They include the following titles:

- *Protection of vegetation*
- *Natural Assets Local Law*
- *Preservation of Trees*
- *Vegetation Management*

The **Cherbourg** and **Domadgee Aboriginal Councils** protect trees of a girth of 50 cm (at the base) or more from ring-barking, cutting down, topping, removing, poisoning, injuring or wilful destruction. Pruning of trees “for the purpose of regeneration or ornamental shaping” is permitted. Damage to trees is allowed:

- with written Council permission;
- if the Council has certified in writing that the tree is dying, dead, diseased or potentially dangerous;
- where the tree or trees are with the path of proposed roadways, sewerage works, drainage works etc; or
- where the tree or trees are within a building site, within 3 metres of any existing or proposed building.

Barcoo Shire Council (among others) uses Vegetation Protection Orders for “significant vegetation”, which is defined as:

- a) *a valuable part of the natural heritage of the area; or*
- b) *an example of a rare or threatened species or a species that may be, or may be about to become, a rare or threatened species; or*
- c) *a valuable scientific resource; or*
- d) *valuable source of propagating stock or of other horticultural value; or*

- e) of historic significance because of its association with an important historical event or the commemoration of an important historical event; or
- f) of cultural significance because of its significance in Aboriginal rituals, religious observance or legend;
- g) a valuable educational or recreational resource; or
- h) a significant habitat for native animals (including native or migratory birds) or a part of a fauna and flora corridor; or
- i) a significant part of a vegetation system or other ecological system; or
- j) important for maintaining the life-supporting capacities of ecological systems for present and future generations; or
- k) important for protecting a water catchment area; or
- l) important for its support for natural or artificial landforms such as drainage lines, watercourses, bodies of water, foreshores, slopes or unstable and erodible soils; or
- m) important for its aesthetic value or its beneficial effect on the amenity of the locality in which it is situated; or
- n) important for its age, height, trunk circumference, or canopy spread; or
- o) important for its unique contribution to the landscape; or
- p) a visual buffer against unsightly objects or a buffer against pollutants, light spillage, noise or other factors that have an adverse effect on the environment; or
- q) important as a buffer zone adjacent to areas of conservation significance; or
- r) important in the context of the objectives of State or Local Government planning, land management, and environmental management policies and initiatives; or
- s) significant for such other reason as may be prescribed by local law policy.

Example - A local law policy might, for example, state that the protection of vegetation is of paramount importance if the land on which the vegetation is situated is -

- a ridge top;
- an escarpment;
- a steep slope;
- land within a specified distance of a natural drainage line, a watercourse, a body of water or a foreshore;
- land liable to damage from salinity;
- land with unstable soil or soil that is liable to erosion

VPOs can only apply on private property and cannot apply to vegetation grown for commercial purposes. The process is that anyone may make a submission, notice must be given to the owner and the vegetation must be described by the Council. Council must receive expert advice and a management plan is then made and registered. Damage to the vegetation is permitted on receipt of a permit from Council. Penalty – 850 penalty units, currently \$93,500.

Brisbane City Council's Natural Assets Local Law 2003 provides that a "significant landscape tree" means a tree—

- a) described in schedule 2 and growing within the Emerging Community Area shown on the Planning Scheme Maps in Brisbane City Plan 2000 as amended from time to time; or
- b) included in a register in a Planning Scheme Policy under Brisbane City Plan 2000 as amended from time to time; or
- c) protected under a vegetation protection order in the class IT2.

Significant Landscape Trees in Brisbane City Council

SPECIES	COMMON NAME	DIMENSIONS
<i>Ficus-benjamina, obliqua, platypoda, microcarpa var. hillei, bengaliensis, macrophylla, religiosa, virens, watkinsiana</i>	Fig trees	Greater than or equal to – 100 cm trunk diameter*
<i>Mangifera indica</i>	Mango trees	Greater than or equal to – 80 cm trunk

		diameter
<i>Delonix regia</i> <i>Jacaranda mimosifolia</i>	Poinciana Jacaranda	Greater than or equal to – 80 cm trunk diameter
<i>Araucaria - cunninghamia, bidwillii</i> <i>Agathis robusta</i>	Native pines	Greater than or equal to – 60 cm trunk diameter
<i>Eucalyptus tereticornis</i> <i>Eucalyptus microcorys</i> <i>Eucalyptus racemosa</i>	Forest Red Gum Tallow wood Scribbly gum	Greater than or equal to – 60 cm trunk diameter
*In all cases, trunk diameter is measured at a point 1.0 metre above the “natural” ground level – that is, the ground level prior to the commencement of any works		

It also allows for VPOs with similar provisions to Barcoo Council.

It is allowable to “interfere” with protected vegetation without a permit under this local law if that interference constitutes—

- a) *interference with protected vegetation as permitted under an existing authorisation mentioned in section 48 of this local law;*
- b) *removal of trees or parts of trees that are causing an immediate and significant threat to persons or property as demonstrated by—*
 - (i) *adequate photographic evidence submitted to Council within 10 business days of the occurrence of the threat event; and, if requested*
 - (ii) *an arborist's report;*

Examples of emergency situations—

 - *Split tree trunks;*
 - *Leaning tree(s) with soil upheaval.*
- c) *removal of vegetation—*
 - (i) *where the removal is essential for emergency access or emergency works; or*
 - (ii) *where the removal is immediately required in response to an accident or emergency;*
- d) *pruning to accommodate overhead and underground utilities in accordance with standards agreed between Council and the utility provider;*
- e) *pruning vegetation other than a significant landscape tree for the purpose of maintenance or hazard management, as long as—*
 - (i) *no more than 20% of the live foliage volume of a tree or shrub is removed in any 12-month period; and*
 - (ii) *the part removed is distributed sufficiently evenly over the whole crown that the tree or shrub is not left lop-sided.*

Example for (ii)—

Pruning of overhanging foliage of a tree whose trunk is on adjoining land will not be exempt if the overhanging foliage represents 20% of the live foliage volume or, if less than 20%, removal of all the overhanging foliage leaves the tree lop-sided.
- f) *removal of a tree or part thereof, other than a significant landscape tree, as long as—*
 - (i) *the whole trunk is located within 3 metres of an existing lawfully constructed building on a property less than or equal to 4000 square metres in area; or*
 - (ii) *the whole trunk is located within 6 metres of an existing lawfully constructed building on a property greater than 4000 square metres in area;*
- g) *interference with pasture vegetation;*
- h) *interference with garden vegetation other than—*
 - (i) *a significant landscape tree; or*
 - (ii) *a tree greater than 30 cm in trunk diameter;*

- i) constructing a boundary fence, as long as the vegetation that is interfered with—
 - (i) is located within 3 metres of a property boundary; and
 - (ii) is smaller than 20 cm in trunk diameter; and
 - (iii) is not a significant landscape tree; and
 - (iv) is not in a waterway corridor or wetland.
- j) the removal of a dead tree where that tree is—
 - (i) smaller than 20 cm in trunk diameter, and
 - (ii) is not providing habitat for native fauna;
- k) the removal of a dead limb where that limb is—
 - (i) smaller than 20 cm in diameter, and
 - (ii) is not providing habitat for native fauna.

In its reparation, it provides a number of examples (which makes it difficult to know what conditions it will actually apply!):

Council may impose conditions relating to the following examples—

Requiring —

- *removal of vegetation to be effected in such a manner as to ensure that adjacent protected vegetation is not damaged;*
- *a copy of the permit to be made available to all persons involved in vegetation clearance, earthworks and other works on the site before vegetation clearing commences;*
- *three replacement trees to be planted for each tree removed pursuant to the permit;*
- *a replacement tree, of a particular species or dimensions, or both, to be provided in a specified location;*
- *all surface areas of batter slopes associated with site works to be suitably mulched to an average depth of 100 mm, in addition to replanting or other treatment, in order to reduce the potential for batter destabilisation and soil erosion;*
- *an erosion and sediment control plan to be submitted which—*
 - *identifies how the applicant intends to control potential erosion and sedimentation due to site works;*
 - *is consistent with Council's current erosion and sediment control standard; and*
 - *is satisfactory to Council;*
 - *provides for trees to be retained to be protected by fencing around the root zone that is constructed—*
 - *prior to the commencement of, and retained until the completion of, works; and*
 - *of materials adequate to protect the vegetation from site works and machinery.*
- *that no material is to be stockpiled, vehicular machinery used, or excavation occur—*
 - *within 5 metres of the base of the trunk; or*
 - *within the root zone;*
 - *of any tree(s) to be protected;*
- *the root zone to be fenced off;*
- *the officer named at the top of the permit to be notified of the proposed commencement date of vegetation clearance pursuant to the permit, not less than two working days prior to the commencement of clearance;*
- *adjoining owners to be notified not less than two working days prior to the commencement of clearance of the type and proposed commencement date of vegetation clearance pursuant to the permit;*
- *excluding root systems and basal stumps from the vegetation authorised to be removed pursuant to the permit;*
- *the permit holder to effect the interference in a specified manner which may include implementing an approved management plan;*
- *declaration of compliance to be completed and returned by due date.*

Pruning conditions may specify which branches of a tree may be removed.

Contravention of the local law may result in issuing of a compliance notice, with a penalty of up to \$55,000. If Council needs to undertake reparation works, it can recover costs.

Gold Coast City Council's local law defines "protected vegetation" as that which is:

⁵ Retention of root systems and basal stumps is important in maintaining bank stability

- a) equal to or in excess of 40 centimetres in girth DBA (Diameter Breast Height)(measured at 1.3 metres above average ground level); or
- b) equal to or in excess of 4 metres in height (in areas zoned Rural, Park Residential or Future Urban under the Planning Scheme as at the date of making of this Local Law); or
- c) subject of a vegetation protection order that is in force under this local law.

Furthermore, the *Urban Land Development Authority Act 2007* applies to areas under the **Urban Land Development Authority**. Within its definition of “controlled vegetation”, “significant landscape trees” are:

- *Ficus-benjamina*, *obliqua*, *platypoda*, *microcrapa* var. *hillii*, *bengaliensis*, *macrophylla*, *religiosa*, *virens*, *watkinsiana* (Fig Trees) with a trunk diameter 100 cm or larger
- *Mangifera indica* (Mango) with a trunk diameter 80cm or larger
- *Delonix regia* (Poinciana) with a trunk diameter 80cm or larger
- *Jacaranda mimosifolia* (Jacaranda) with a trunk diameter 80cm or larger
- *Araucaria cunninghamii* (Hoop Pine) with a trunk diameter 60cm or larger
- *Araucaria bidwillii* (Bunya Pine) with a trunk diameter 60cm or larger
- *Agathis robusta* (Queensland Kauri Pine) with a trunk diameter 60cm or larger
- *Eucalyptus tereticornis* (Forest Red Gum) 60cm trunk diameter or larger
- *Eucalyptus microcorys* (Tallow Wood) 60cm trunk diameter or larger
- *Eucalyptus racemosa* (Scribbly Gum) 60cm trunk diameter or larger.

Measurements are conducted at a point 1 metre above the natural ground level.

Queensland has a *Neighbourhood Dispute Resolution Act 2011* which includes shrubs, vines, cacti, palms, dead trees and stumps in its definition of trees. It places the responsibility for maintenance with the owner and enables neighbours to take action on overhanging branches.

Northern Territory

Neither the Northern Territory parliament nor any councils offer protection to trees which are on private land (except for any which may be listed as part of a heritage item under the *Heritage Conservation Act*). Councils do have bylaws protecting trees on public land. The National Trust has attempted to bring the plight of significant trees on private land to the community’s attention.

Reviews of legislation in the last five years

New South Wales reviewed its *Trees (Disputes Between Neighbours) Amendment Act* in 2009, amending Bill passed in 2010

South Australia – provisions within the *Development Act* reviewed in 2007, came into effect in 2011

Queensland - introduced the *Neighbourhood Dispute Resolution Act 2011* and is also reviewing the *Vegetation Management Act 1999*

Discussion

What is best practice?

Which laws best protect biodiversity in urban landscapes?

Should trees be managed on a regional basis through species lists?

Would neighbourhood laws similar to Qld and NSW alleviate most of the community angst about large trees?

Local government has a critical role. In many jurisdictions it promulgates its own local laws and planning instruments. Even when a State statute exists (SA) it is still the level of government which administers that legislation. The interest and resources of individual councils in developing registers can lead to an ad hoc approach.

There is a lack of consistency with so many different approaches – does this matter?

Should each State and Territory have a “safety net” to protect trees, such as we have in SA, whereby the rules are much the same (at least across the metro area)? In fact, due to risk aversion at local government level, the laws in SA took much of the decision making away from local government (as Dr Bob Such regularly reminds us).

SA’s laws are more detailed than other states, especially since the Act was amended and new Regs promulgated; if laws are more detailed there is an obligation to get those details right! If that were the case, we would have a right to call them “sophisticated” or “well developed”.

Laws may have developed differently in different states reflecting the historical clearance of native vegetation eg SA metro has v little in metro area c/f other jurisdictions which have scattered remnants?

Importance of the National Trust in supplementing tree protection laws

Supplementary role of the National Trust in preserving trees which might not meet statutory or local government criteria – Vic criteria used as a guide in Department of Planning and Community Development’s “Practice Notes” and frequently referred to be Victorian local councils, Tas (see Adam’s notes), NT.

National Trust criteria in Victoria

1. Horticultural and/or genetic value
2. Unique location or context
3. Rare or localized distribution
4. Particularly old specimen
5. Outstanding size (girth, head and canopy)
6. Aesthetic value
7. Curious growth habit
8. Historical significance
9. Connection to Aboriginal culture
10. Outstanding example of species

National Trust of SA

1. Historical
2. Cultural
3. Aesthetic (“magnificent)
4. Intergenerational (replacement for dwindling stock of significant trees)
5. Rare – unexpected as a species, or in unusual location
6. Remnant vegetation
7. Scientific (used in pharmacology)
8. Location and context (elements for historical and cultural reference)
9. Monetary value

State by state (or territory)

ACT	<p><i>Nature Conservation Act 1980</i></p> <p><i>Tree Protection Act 2005</i></p> <p><i>Heritage Act 2004</i></p> <p>Local government registers?</p>	<ul style="list-style-type: none"> National parks, declaration of species (either for protection or as pests), native vegetation, protection of native timber Australia's only tree-specific law Excludes trees in "built up urban areas", referring them to the Tree Protection Act <p>n/a – ACT Legislative Assembly is also the local council</p>
NSW	<p><i>National Parks and Wildlife Act 1974</i></p> <p><i>Threatened Species Conservation Act 1995</i></p> <p><i>Native Vegetation Act 2003</i></p> <p><i>Environmental Planning and Assessment Act 1979</i></p> <p><i>Heritage Act 1977</i></p> <p><i>Trees (Disputes Between Neighbours) Amendment Act</i></p> <p>Local government registers?</p>	<ul style="list-style-type: none"> Parks, declarations, Aboriginal lands, marine mammals, ecological communities Declaration of species, also looks at recovery and "bio-banking" Native vegetation, including trees, understorey plants, groundcover and plants in wetlands Empowers local government to implement tree protection through Environmental Planning Instruments (EPIs) – cl 26(1)(e) Only protects trees if they form part of heritage item Aims to resolve neighbour disputes re trees <p>Yes</p>
NT	<p><i>Territory Parks and Wildlife Act Planning Act</i></p> <p><i>Heritage Conservation Act</i></p> <p>Local government registers?</p>	<ul style="list-style-type: none"> National parks, declaration of species (either for protection or as pests) Must take into consideration in approving planning approvals "any potential impact on natural, social, cultural or heritage values", but no reference to trees only if identified as a heritage object or a heritage place (s 26), no specific tree reference in the Act; the register has ?12 trees on it <p>None. The National Trust and Greening Australia have a significant tree register of potentially 120 trees, but they have no legal protection</p>
QLD	<p><i>Nature Conservation Act 1992</i></p> <p><i>Vegetation Management Act 1999</i></p> <p><i>Sustainable Planning Act 2009</i></p> <p><i>Urban Land Development Authority Act 2007</i></p> <p><i>Aboriginal Cultural Heritage Act 2003</i></p> <p><i>Torres Strait Islander Cultural Heritage Act</i></p> <p><i>Queensland Heritage Act 1992</i></p> <p><i>Neighbourhood Dispute Resolution Act 2011</i></p> <p>Local government registers?</p>	<ul style="list-style-type: none"> National parks, Aboriginal lands, forests, declaration of species (either for protection or as pests) Native vegetation that is remnant to protect ecosystems + veg in areas declared as high conservation value; excludes grasses and mangroves Sets out how planning can occur in Qld while promoting "ecological sustainability" Controls the clearing of certain vegetation within a specific development; bylaws – much more detail Aboriginal heritage protection, no specific reference to trees Ditto Only protects trees if they form part of heritage item Aims to resolve neighbour disputes re trees and fences <p>Not registers, but many have bylaws: Barcoo, Boulia, Bulloo, Brisbane, Cairns, Cherbourg Aboriginal Shire, Doomadgee Aboriginal Shire, Gold Coast, Ipswich, Lockhart River, Palm Island Aboriginal Shire, Quilpie, Redland, Sunshine Coast, Whitsunday, Winton</p>
SA	<p><i>Native Vegetation Act 1991</i></p> <p><i>Development Act 1993</i></p> <p><i>Heritage Places Act 1993</i></p> <p><i>?Aboriginal Heritage Act</i></p> <p>Local government registers?</p>	<ul style="list-style-type: none"> Native vegetation; applies to non-metro parts of the State + the Adelaide Hills Quite detailed Only protects trees if they form part of heritage item, Act does refer to trees <p>Only the Cities of Adelaide, Burnside, Prospect and Unley, under the</p>

		<i>Development Act 1993</i>
TAS	<i>Nature Conservation Act 2002</i> <i>Land Use Planning and Approvals Act 1993</i> <i>Historic Cultural Heritage Act 1995</i> <i>Aboriginal Relics Act</i>	<ul style="list-style-type: none"> • National parks, conservation covenants (private land), protected species, Aboriginal lands • empowers councils but only reference to trees is that pruning falls within the category of “works”; councils can adopt Planning Schemes to control and protect land use and vegetation • Only protects trees if they form part of heritage item; no specific reference to trees • Aboriginal heritage protection, no specific reference to trees <p>Hobart, Kingsborough, Dorset, Georgetown – Tree protection orders + registers</p>
	Local government registers?	
VIC	<i>Flora and Fauna Guarantee Act 1988</i> <i>Conservation, Forests and Land Act 1987</i> <i>Planning and Environmental Act 1987</i> <i>Heritage Act 1995</i> <i>Aboriginal Heritage Act</i>	<ul style="list-style-type: none"> • Declarations of protected species • Aboriginal lands, forests, reserve system, crown leases etc • State and local planning schemes; local councils may include a “planning overlay” /sig tree register (scheme must be approved by the Minister) ; no explicit ref to “tree” in the Act; • In definitions, specifically includes “tree” as a heritage place • Aboriginal heritage protection, no specific reference to trees <p>Yes, under <i>Local Government Act 1989</i></p>
	Local government registers?	
WA	<i>Wildlife Conservation Act 1950</i> <i>Conservation and Land Management Act 1984</i> <i>Environmental Protection Act 1986</i> <i>Planning and Development Act 2005</i> <i>Heritage of Western Australia Act 1990</i> <i>Aboriginal Heritage Act 1972</i>	<ul style="list-style-type: none"> • Protected flora and fauna • Land and marine reserves, forests • EPA, native vegetation, declared areas, waste, pollution • Local planning schemes are enabled through Part 5 • Only protects trees if they form part of heritage place • Aboriginal heritage protection, no specific reference to trees
	Local government registers?	Yes, most/all councils have through local planning schemes in Planning Act

Acknowledgements

SA Parliamentary Library

References/resources

All Acts and Regulations: Australasian Legal Information Institute: <http://www.austlii.edu.au/>

ACT

ACT Territory and Municipal Services “ACT Tree Register”:

<http://www.tams.act.gov.au/live/environment/treeprotection/acttreeregister>

NSW

NSW EDO Factsheet “Trees and Native Vegetation”, accessed at

http://www.edo.org.au/edonsw/site/factsheet/fs05_3.php

Department of Planning and Infrastructure

Land and Environment Court Tree Dispute Information, accessed at:

<http://www.lawlink.nsw.gov.au/lawlink/lec/ll lec.nsf/pages/LEC tree disputes information>

NT

National Trust Register of Significant Trees, accessed at: <http://www.nationaltrustnt.org.au/files/Significant-Tree-Register.pdf>

QLD

Queensland Civil and Administrative Tribunal "Trees and the Law" accessed at: <http://www.qcat.qld.gov.au/using-qcat/faqs/faq-tree-disputes>

Department of State Development, Infrastructure and Planning, local law search facility

Department of Local Government local laws database at : <http://www.dsdip.qld.gov.au/local-government/local-laws-online.html>

Department of Justice and Attorney-General "Tree Disputes Q&A" accessed at:

<http://www.justice.qld.gov.au/corporate/justice-initiatives/neighbourhood-disputes-resolution-act-2011/trees>

SA

Regulated Trees amendment, accessed at:

<http://www.sa.gov.au/subject/Housing,+property+and+land/Building+and+development/Building+and+development+applications/Development+plans+and+their+use/Amendments+to+development+plans+proposed+by+the+minister/Regulated+trees+amendment>

TAS

VIC

Department of Planning and Community Development (DPCD) VPP Practice Note "Vegetation Protection in Urban Areas", 1999 accessed at

http://www.dpcd.vic.gov.au/_data/assets/pdf_file/0010/41698/Veg_Protection_complete_note.pdf

DPCD VPP 52.17 accessed at: http://planningschemes.dpcd.vic.gov.au/aavpp/52_17.pdf

National Trust of Australia (Victoria): Protection of Significant Trees

WA

Legal Aid "Dividing Fences and other boundary issues" accessed at;

<http://www.legalaid.wa.gov.au/InformationAboutTheLaw/Homes/neighbours/Pages/Dividingfences.aspx>