



**Review of Significant Tree Laws**  
**submission by the**  
**South Australian Society of Arboriculture**

South Australian  
Society of  
Arboriculture

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## Who We Are

The South Australian Society of Arboriculture is a volunteer based organisation that includes a range of members involved in the care and maintenance of trees in urban areas within Adelaide and surrounding townships and rural areas. Our membership includes:

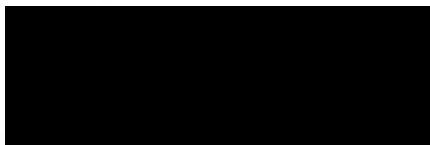
- Arborists who undertake pruning works on trees.
- Arborists who undertake tree removal works.
- Consulting arborists who assess and advise a range of clients on the management of urban trees, including privately and publicly owned trees on residential sites, commercial sites, schools, public open space and more.
- Urban Forest officers within Local Government.
- Suppliers of equipment to the tree care industry.
- Training providers to the tree care industry.
- Members of the public interested in Arboriculture and Urban Forestry in South Australia.

The South Australian Society of Arboriculture understands the current review is not specific to the Regulated and Significant Tree Laws and that wholesale changes to these laws or sections of the relevant legislation and regulations are unlikely to occur on a broad scale as part of this review. However, we believe this is pertinent opportunity for us to raise points of interest that need consideration as part of the overall review and the impact other changes may have on the legislation and to provide background for any future review of Regulated and Significant Tree Laws.

Thank you for taking the time to consider our submission.



Michael Palamountain  
SASA Committee Member  
Life Member



Marcus Lodge  
SASA Committee Member  
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## Background

Many of our members have been working in the South Australian arboriculture industry since the original inception of the Regulated and Significant Tree Laws under the *Development Act 1993* came into effect in 2000. Our members have seen the legislation evolve into its current form, including the following amendments.

### Legislation History

- The original Significant Tree laws that came into effect under the *Development Act 1993* in 2000 where a tree was deemed to be a Significant Tree if it attained a trunk circumference of 2.5m or greater.
- The first review of the *Development Act 1993* and *Development Regulations* in 2002 when trunk circumference was reduced to 2 metres
  - In addition, local councils were permitted to create a 'Significant Tree Register' within their *Development Plan*. This was implemented by the City of Adelaide, City of Unley, City of Burnside and the City of Prospect.
- The second review of the *Development Act 1993* and *Development Regulations* in 2008 created the *Development (Regulated Trees) Amendment Act 2009* which resulted in changes to the *Development Regulations 2008* when multiple changes were introduced and eventually implemented in 2011
  1. two tiers of tree protection were introduced:
    - Regulated Trees (trunk circumference greater than 2.0m)
    - Significant Trees (trunk circumference greater than 3.0m).
  2. a range of exemptions to Regulated and Significant trees were introduced under—:
    - Certain tree species within 10m of a dwelling or inground swimming pool as described in the *Development Regulations 2008* - 6A Regulated and significant trees (5.a.)
    - Certain tree species do to perceived undesirable characteristics as described in the *Development Regulations 2008* - 6A Regulated and significant trees (5.b.)
    - Trees under the control of various ministers or commissioners in the case of Education, roadways and railway corridors as described in the *Development Regulations 2008* - Schedule 3—Acts and activities which are not development, Section 17—Removal of trees in certain cases.
    - Trees within 20m of a dwelling in a bushfire protection area as described in the *Development Regulations 2008* - Schedule 3—Acts and activities which are not development, Section 17—Removal of trees in certain cases..
- In 2021 the Regulated and Significant Tree Laws were reassigned from the *Development Act 1993* and *Development Regulations 2008* to the *Planning, Development and Infrastructure Act 2016* and *Regulations*

2017. Which resulted in further Ministerial Exemptions where trees can be removed without approval.

### Legislation Changes Outcomes

As a result of these gradual changes to the legislation, our members have made the following general observations:

#### 2002

That the original amendments in 2002 provided protection to trees with smaller trunks (2.0m or greater, down from 2.5m or greater), which provided protection to a larger number of urban trees. The legislation also provided guidelines to assess whether a tree actually warranted protection as Significant Tree and guidelines on the feature tree might have that could allow for its removal. This was seen as a positive step as it provided protection to a larger number of trees whilst defining the characteristics that trees should provide to warrant their protection once they had achieved the identifying threshold of a two metre trunk circumference.

#### 2011

The amendments in 2011 introduced a number of exemptions to the legislation such that many trees previously protected were no longer protected. This led to: -

1. an immediate and significant increase in the removal of mature trees, that were previously protected, without requiring approval.
2. trees that had previously been protected through the development process became exempt due species and/or proximity to a dwelling/swimming pool. This resulted in additional removal of trees that had successfully been incorporated into a development.
3. the removal of large trees is continuing at an increased rate due to the regulations currently in place and the prevalence of both infill and greenfield developments to accommodate new housing requirements and needs.
4. the process of removing regulated and significant trees has become easier based on the wide range of exemptions in place and the reduced level of protection afforded to Regulated Trees compared to the 2002 regulations.

#### 2021

The reassignment of the Regulated and Significant Tree Laws to the *Planning, Development and Infrastructure Act 2016* and *Regulations 2017* has continues the trend of reduced tree protection particularly in regard to: -

1. the ministerial exemptions particularly around road, rail and education have seen an increase in tree removal to allow projects to go ahead without consideration of the potential to protect the trees. A number of large trees have been removed because they were perceived to be in the way when they could have been protected and/or with minor changes they could have been retained.
2. the trees included in the Significant Tree Registers within the *Development Plans* (and now the Planning and Design Code) with the

City of Adelaide, City of Unley, City of Burnside and the City of Prospect, have gradually been depleted. Adding replacement trees to these registers has become increasingly difficult as the overall tree population, particularly of larger trees, has diminished, at least partially due to the level of exemption within the *PDI Act 2016* and the *Planning and Design Code (Regulated and Significant Tree Overlay)*.

3. An overall increase in the concern of diminishing urban tree cover as noted by most local councils. This is supported by documented evidence as presented on a regular basis at the TREENET Symposia, the Arboriculture Australia Conference and other industry body events.

In response to the current situation, various submissions have been put forward. The South Australian Society of Arboriculture has considered the following documents in this review.

- Belder, R. L., Delaporte, K. D., & S. Caddy-Retalic. - May 2022 - *Urban tree protection in Australia - Review of regulatory matters - A report for the South Australian Attorney General's Department Planning and Land Use Services* (referred as the University of Adelaide Report in this document).
- Dean Nicolle – April 2022 - *Open Space and Trees Project - Part 1A (Arborist Review)* (referred as the Nicolle Report in this document)

## Concerns

We do not believe the current form of the *Planning, Development and Infrastructure Act 2016 and Planning, Development and Infrastructure Regulations 2017* are appropriate to effectively manage a sustainable urban tree population/urban forest in metropolitan Adelaide, nor support the necessary initiatives to increase urban tree cover across metropolitan Adelaide.

Changes to the current laws are necessary if we are to preserve and improve on the urban forest that is essential to the health and wellbeing of Adelaide, its population, its environment and the natural ecosystems it supports.

Urban trees provide a wide range of human, environmental, and economic benefits that improve the pleasantness of a local area that benefit human wellbeing. Urban trees make our cities better places to live and can provide a sense of place and time.

Some of the benefits afforded by urban trees include improvements to air quality, particulate pollution mitigation, moderation of climatic conditions (shading, cooling and wind speed reduction), mitigation of heat island effects (generated by hard surfaces such as roads, pavement and buildings), reduce urban glare, reduce loading on stormwater systems, improve water quality, reduce energy costs, aesthetically enhance local areas and urban structures, improve property values, improve human health, wellness and sociability.

In addition, urban trees can provide benefits to a range of animals that inhabit urban areas, including providing a range of habitat opportunities, maintain biodiversity in the local environment and providing wildlife corridor. These benefits are afforded to some extent by exotic trees, but the benefits increase if the trees are indigenous to the local area.

- Hirons, A. and Thomas, P. (2018), *Applied Tree Biology*, Wiley Blackwell, UK.
- Harris, R., Clark, J, and Metheny, N. (2003), *Arboriculture: Integrated Management of Landscape Trees, Shrubs, and Vines*, Prentice Hall.
- Ulmer, J.M., Wolf, K., Backman, D., Tretheway, R., Blain, C., O’Neill-Dunne, J. *et.al* (2016), ‘Multiple health benefits of urban tree canopy: The mounting evidence for a green prescription.’ *Health and Place*, 42:54-62.
- *Independent inquiry into management of trees on public land – 2010 issues paper*, by Renata Faast.

We understand the original intent of the Act in relation to Significant Trees (following the good work of the late Bob Such) was to conserve/protect some of the larger older trees in the Adelaide urban environment. However, we now understand that such legislation should not solely focus on the preservation of the ‘Veteran’ trees of Adelaide but look forward to developing and maintaining a sustainable Urban Forest into the future with a mixture of tree species and ages. This is best achieved by also affording protection to younger and smaller developing trees.

## Recommendations

The following recommendations are made by the South Australian Society of Arboriculture to achieve this.

### 1. **Maintain the trunk circumference threshold as the primary identifier however it should be modified**

- a) reduce the trunk circumference threshold it to 1.0 metre
  - this will protect a larger number of trees that provide benefit in the urban environment whilst not placing an unreasonable burden on planning authorities, arborists or the tree owners and managers.
  - the University of Adelaide Report recommends >0.5m and to introduce tree heights and canopy widths. However, we feel that whilst reducing tree size to 0.5m will be hugely beneficial to the preservation of the urban forest it will be a logistical challenge and is likely to an unreasonable burden on planning authorities, arborists and the tree owners and managers.
  - Many tree species can grow to reach a trunk circumference of 0.5 metres within a decade however they may not provide the level of benefit the legislation is seeking to protect.
  - The use of alternative metrics has merit, including tree height thresholds or tree volume thresholds. However, these metrics are not as easy to measure or verify and will be difficult for members of the public to both implement and potentially accept. There is however an argument to add a height measure as a secondary qualifier that is considered as part of the assessment as one of the *Performance Outcomes*. For example a Willow Myrtle in the majority of Adelaide may achieve a regulated trunk circumference however it is unlikely to be more 6 metres tall, whereas the same tree growing in the coastal suburbs between Kingston Park and Outer Harbour may reach between 10 and 15 metres in height and therefore be a much more desirable tree.
- b) Consider lowering the trunk circumference threshold to 0.5 metres for trees in the public realm, i.e.: street trees, park and reserve trees, etc, this would give the controlling authority a greater opportunity to protect their tree assets through legislation not just ownership. Often street trees are not valued by developers and this could assist in providing greater understanding of the value to such decision makers.
- c) Alter the method of calculating the trunk size for multi-trunked trees.
  - the current method of adding together and then averaging the circumference measurements of multi-trunked trees leads to an artificially high measurement that does not reflect the size of the tree.
  - the Australian Standard AS4970-2009 *Protection of trees on development sites* uses an alternative formula to determine the trunk size of multi-trunked trees, this method gives a more realistic trunk to crown size.



- the formula involves squaring each circumference measurement, summing the results and then calculating the square root of the sum, the formula is written as follows: -

$$\text{Combined Circumference} = \sqrt{(\text{CircA}^2 + \text{CircB}^2 + \text{CircC}^2)}$$

- Whilst there may be concerns that this is a more complicated formula it is commonly used in Arboriculture and there are a number of Arborist websites that already include a calculator that calculates the combined trunk diameter using this method and these could be readily adapted to work for circumference or a calculator could be added to the PlanSA website.

## 2. Expand the definition of regulated and significant trees

- In addition to those trees that are defined as regulated or significant trees under the *Planning, Development and Infrastructure (General) Regulations 2017* - Section 3F— Regulated and significant trees, include the following group of trees:
  - Trees listed in the Register of Significant Trees with the National Trust of South Australia (<https://trusttrees.org.au/>).
  - These are trees listed for this social, cultural, historic, horticultural or significance to South Australia.
  - At present, these trees are not afforded any legislative protection, unless they fall under the relevant protection measures of the current *Planning, Development and Infrastructure Act 2016*.

## 3. Remove the exemption for trees within 10 m of a dwelling or inground swimming pool:

- This exemption has been responsible for the removal of a significant number of trees from the urban forest since its inception from 2011.
- This rule allows for mature trees to be removed, irrespective of whether or not they are diseased with a short life expectancy, pose an elevated level of risk to public or private safety or contribute to extensive building damage.
  - It provides exception to the genus *Eucalyptus* which may appear beneficial but is unnecessarily selective.
  - It provides exception to the species *Agonis flexuosa*. The reason for this is unclear. The species is of small stature and often does not meet the relevant criteria for protection under the Performance Outcomes 1.1 or 1.2 of the *Planning and Design Code*.
- There are adequate provisions in Performance Outcome 1.3 in the *Planning and Design Code* currently in place for trees to be removed if and when they present an unacceptable problem, irrespective of their distance to a dwelling or inground swimming pool including:
  - to remove a diseased tree where its life expectancy is short.

- to mitigate an unacceptable risk to public or private safety due to limb drop or the like.
- to rectify or prevent extensive damage to a building of value.

#### 4. Delete selective species lists

- The current list of exempt tree species (*Planning, Development and Infrastructure (General) Regulations 2017 - 3F—Regulated and significant trees (4) (b)*) contains a variety of trees that are exempt from controls. The reasons for their inclusion in the listing are unclear.
  - Some of the species do not grow in Adelaide.
  - Some of the species may have weed status in specified situations or locations, but do not present weed potential in all urban settings in metropolitan Adelaide.
- The review of the tree species listing by Dr Dean Nicolle has merit:
  - It is based on trees with weed status listing
  - It includes trees that are not optimally suited to the overall soil and climatic conditions found in Adelaide, and potentially have a reduced or short life expectancy.
- However overall, this approach is problematic:
  - It relies on accurate identification of tree species. While some arborists and botanist may be well versed in such species identification, it is not as straight forward for property owners and planning staff. It creates errors and complexity in the assessment process.
  - The listed tree species may not be optimally suited to local soil and climatic conditions to localised areas in Adelaide. However, Adelaide has a wide range of soil and climatic zones, ranging from the low rainfall conditions in coastal areas, that increase in rainfall levels towards the east across the Adelaide plains, then increase further up the Hills Face Zone to a maximum of ~1200mm in various locations in the Adelaide Hills.
  - While some of the listed species may not perform for an extended period of time in coastal zones, they may well perform for 3 or more decades in higher rainfall zones. Where trees do become diseased, with a short life expectancy, there are provisions for their removal under Performance Outcome 1.3 of the *Planning and Design Code*. Therefore, a blanket exclusion trees that may have short life expectancy in some situations is not warranted or required.
  - The weed potential and status of trees varies across the state of South Australia and even across the urban environment of metropolitan Adelaide.. Trees growing in well maintained ornamental gardens well away from creek lines and rivers may have very low weed dispersal potential. In contrast, trees growing in close proximity to such water courses may have very high weed dispersal potential. To provide no protection to such tree species, irrespective of whether they present weed dispersal potential is short sighted. There are many examples of such trees providing great benefit in an urban setting. A better approach would be to create a separate

legislative criterion where an appropriately qualified experts assesses the actual weed potential of a specific tree within its own site specific circumstances.

- The use of a list species is also problematic as tree species can change names. An example of this is the Monterey Cypress which had the botanic name *Cupressus macrocarpa* but is now known as *Hesperocyparis macrocarpa* and in theory is no longer exempt.
- There are adequate provisions in Performance Outcome 1.3 in the *Planning and Design Code* currently in place for trees to be removed if and when they present an unacceptable problem, irrespective of their species including:
  - to remove a diseased tree where its life expectancy is short.
  - to mitigate an unacceptable risk to public or private safety due to limb drop or the like.
  - to rectify or prevent extensive damage to a building of value.

## 5. Review bushfire exemptions

- *Schedule 4 – Exclusions from definition of development – general, Section 18 - Removal of trees in certain circumstances (1) (b) of the Planning, Development and Infrastructure (General) Regulations 2017* identifies trees that achieve a regulated trunk circumference are exempt from control if they are within 20 metres of a dwelling in a Medium or High Bushfire Risk area within a *Hazards (Bushfire Protection) Overlay under the Planning and Design Code*.
  - The assessment of bushfire risk from trees is outside the area of expertise of most of our members.
  - We have observed many trees being removed under this exemption. While some of these tree removals may be justified, we do not believe were all necessary or warranted for bushfire protection.
  - Not all trees within 20m of a building within a bushfire risk actually pose a hazard to the building at all sites; there is evidence that the right tree in the right place can protect property in a bushfire.
  - The bushfire risk of a tree to a building should be assessed in relation to site specific circumstances, rather than applying a blanket rule for all situations.
- Additionally the intent of this exemption is covered under Performance Outcome 1.3 of the *Planning and Design Code*, any regulated or significant tree can be removed *to reduce an unacceptable hazard associated with a tree within 20m of an existing residential, tourist accommodation or other habitable building from bushfire*. Therefore if a suitably qualified person, CFS approved or similar, identifies a tree as a bushfire risk its removal would be reasonable development and receive approval from the relevant authority.
- In our experience the majority of trees assessed for bushfire risk are identified as acceptable and do not require removal.

- An alternative to this exemption would be to align the exemption with the same criteria as the *Native Vegetation Act 1991* regardless of tree species and whether or not the tree is protected a native vegetation.

## 6. Review the definition of tree damaging activity

- The current definition of tree-damaging activity under the *Planning, Development and Infrastructure Act 2016* (Part 1 – Preliminary - Section 3 – Interpretation) states:

*tree-damaging activity means*

- (a) *the killing or destruction of a tree; or*
- (b) *the removal of a tree; or*
- (c) *the severing of branches, limbs, stems or trunk of a tree; or*
- (d) *the ringbarking, topping or lopping of a tree; or*
- (e) *any other substantial damage to a tree,*

*and includes any other act or activity that causes any of the foregoing to occur but does not include maintenance pruning that is not likely to affect adversely the general health and appearance of a tree or that is excluded by regulation from the ambit of this definition.*

- The definition should be expanded to include the following:
  - *but does not include maintenance pruning that is not likely to affect adversely the general health, **structural integrity** ~~and~~ or appearance of a tree*
  - Mandate that the pruning of regulated or significant trees be undertaken:
    - By appropriately qualified arborists (Minimum Certificate III in Arboriculture)
    - In accordance with relevant industry standards, such as *AS4373-2007 Pruning of amenity trees* (Australian Standards) and *MIS308 Tree Pruning* (Arboriculture Australia)
  - Mandate that the protection of regulated or significant trees on development sites be undertaken:
    - By appropriately qualified arborists (Minimum Certificate V in Arboriculture)
    - In accordance with relevant industry standards, such as *AS4970-2009 Protection of trees on development sites* (Australian Standards).

- That consultants be either members listed as Registered Consulting Arborists with Arboriculture Australia or Accredited Members of the Institute of Australian Consulting Arboriculturists.

## 7. Remove Ministerial exemptions for the removal of trees

- The current ministerial exemptions outlined in the *Planning, Development and Infrastructure (General) Regulations 2017* - Schedule 13—State agency development exempt from approval - 2—General should be removed.
- Trees within such lands controlled by the relevant Ministers or Commissioners should be assessed for their removal under the existing provisions outlined under Performance Outcome 1.3 or 1.4 in the *Planning and Design Code*.

## 8. Increase the fees for the Urban Tree Fund

- Under the current *Planning, Development and Infrastructure Act 2016* - Funds and off-set schemes—Part 15 - Off-set schemes—Division 2 - 200—Urban trees funds, fees can be requested to be paid into an Urban Tree Fund to offset the removal of a regulated or significant tree.
- These contributions are not reflective of:
  - the value of the removed tree in most cases.
  - the costs to purchase, plant and maintain a young tree to the stage of maturity.
- The South Australian Society of Arboriculture recommends the fees be increased to reflect such costs more proportionately.
- There are a number of ways that trees can be valued generally and/or in relation to a development, including: -
  - As percentage of the value of the land
  - A tree valuation method consistent with MIS506 Tree Valuation
  - Multiple other industry recognised valuation system.
- This is separate to, and independent of the requirement to replant new trees.