

# **Inquiry into the *Native Vegetation Act 1991 (SA)***

**LGA Submission**

**July 2021**

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## Summary of recommendations

In conducting and reporting on this inquiry the Local Government Association of South Australia (LGA) asks that the Natural Resources Committee (“the Committee”) forms findings and recommendations that:

1. consider if the current operations of the Native Vegetation Fund could be improved to better support research, preservation, enhancement and management of native vegetation in South Australia;
2. consider how the regulated tree regime can be simplified and made easier for the community to understand and apply in practice;
3. recommend state government, in collaboration with local government, other strategic stakeholders and landowners, work together to develop sensible, efficient, and practical arrangements to manage roadside native vegetation that includes responsibility and cost sharing opportunities; and
4. consider alternate offset options so not to deter from vital planning and development opportunities in regional areas.

# Introduction

## The Local Government Association of South Australia

The Local Government Association of South Australia (LGA) is the voice of local government in South Australia, representing all councils across the state and the Anangu Pitjantjatjara Yankunytjatjara.

The South Australian *Local Government Act 1999 (SA)* recognises the LGA as a public authority for the purpose of promoting and advancing the interests of local government. The LGA is also recognised in and has prescribed functions in 29 other South Australian Acts of Parliament. The LGA provides leadership, support, representation and advocacy relevant to the needs of our member councils.

The LGA is a strong advocate for policies that achieve better outcomes for councils and the communities they represent. As such the LGA welcomes the opportunity to provide a submission to this inquiry into the Native Vegetation Act 1991.

This submission has been informed by consultation with the LGA membership, existing policy positions developed through consultation with our membership and recent consultation and discussions undertaken in relation to trees and other relevant areas of planning and climate change that align and fall within the scope of this inquiry.

## Background

Local government in South Australia plays an important role in the management, protection, and enhancement of native vegetation in South Australia.

South Australia's native vegetation is crucial to a healthy and biodiverse landscape. Native vegetation underpins South Australia's cultural identity and plays an important role in the relationship of Indigenous people with country – their traditional lands and waters.

The Department of Infrastructure and Transport has identified South Australia's native vegetation as highly valued because:<sup>1</sup>

- it provides critical habitat for South Australia's unique native biodiversity,
- it helps protect our land, coastlines and waterways from erosion, salinity and climatic extremes, mitigating the effects of a changing climate,
- it supports agricultural production through the provision of windbreaks, shelter for stock, and habitat for natural pest predators and crop pollinators
- it improves our health and well-being by providing us with a connection to nature, and
- it is an important element of our state's natural identity.

Local government in South Australia are responsible for the management of thousands of hectares of native vegetation. In metropolitan Adelaide many of these areas are small or isolated patches where native animal species are struggling to survive and in regional South Australia council's manage vast areas of native vegetation.

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<sup>1</sup> DPTI, *Native Vegetation Fact Sheet* [Fact Sheet - Native Vegetation \(dpti.sa.gov.au\)](https://www.dpti.sa.gov.au/fact-sheet-native-vegetation)

# LGA Submission

The LGA has used the Committee's Terms of Reference to structure this submission.

## LGA policy positions

The LGA has worked with member councils to adopt policy positions, based on robust research and evidence, to recognise their roles and identify how local government can be an important partner in government.

The following LGA policy positions underpin this submission:

### 4.1.5 Native Vegetation

Local government supports retention and remediation of native vegetation outside of townships and that opportunities to expand or remediate native vegetation within townships should be fully explored. Councils shall adhere to native vegetation guidelines while maximising opportunities in all planning and development activities.

### 4.4 Managing the Risks of Climate Change

Local government acknowledges that climate change poses a serious risk to local communities and ecosystems. All levels of government are urged to take action that will help address the effects of climate change in local communities.

#### 4.4.1 Partnership

Local government accepts that negative impacts from climate change are inevitable, and that building resilience to these impacts is a joint responsibility. Councils shall continue to be key partners in delivering a strategic response to climate risks, recognising obligations to other parties.

Finally, the investigations under this inquiry are of particular interest to the LGA as it strategically aligns with an item of business carried at the LGA 2020 Annual General Meeting that the LGA Secretariat has scheduled to progress in its 2021/22 workplan:

*The Annual General Meeting requested the LGA to:*

1. *investigate the Native Vegetation Act 1991 (SA), the Native Vegetation Regulations 2017 (SA) and relevant guidelines to consider, in particular, the effect that it has on:
  - a. road safety and function; and
  - b. cost implications to councils across the state; and*
2. *prepare a report for the LGA Board of Directors on the outcomes of the investigation (in part 1) to inform future advocacy to the State Government on matters relating to the management of Native Vegetation.*

## Functions of the Native Vegetation Act

1. To review the functioning of the Native Vegetation Act 1991 in South Australia and how it compares to other jurisdictions across Australia.

### Role of the Native Vegetation Fund

The Native Vegetation Fund (“Fund”) is formed under section 21 of the *Native Vegetation Act 1991* (SA) (“the Act”). The Native Vegetation Council is responsible for the administration of the Fund, in accordance with the Act.

The major purpose of the Fund is to provide funds to be applied for research, preservation, enhancement, and management of native vegetation in South Australia and encouraging the re-establishment of native vegetation on land from which it has been previously cleared.<sup>2</sup>

Feedback from LGA membership indicates that there may be scope to improve the operation of the Fund.

Councils have indicated that the current process to obtain funding for projects is difficult and competitive. Additionally, the monitoring and reporting process for projects are onerous. This Fund could be a mechanism to facilitate landscape scale change through research and major investment in on-ground works and/or strategic land purchases that can support attracting development, particularly in South Australia’s regions.

Resources from this Fund could be used to support councils (particularly small regional councils that manage an expansive road network), state government (Department of Infrastructure and Transport), Country Fire Service (CFS) and landowners to better manage roadside vegetation clearance. For example, the Fund could be used to support the multi-stakeholder consultation required to develop and implement a roadside vegetation management plan that considers ecological aspects, fire and road safety considerations.

The suggestions above align with the objects of the Act, namely ...*The conservation, protection and enhancement of the native vegetation of the State and, in particular, remnant native vegetation, in order to prevent further – ...loss of critical habitat.*<sup>3</sup>

The balance of the Native Vegetation Fund as at June 2020 was \$9,732,000.<sup>4</sup> This provides some opportunity for expenditure from this Fund.

***Recommendation 1 – The Committee consider if the current operations of the Native Vegetation Fund could be improved to better support research, preservation, enhancement and management of native vegetation in South Australia.***

<sup>2</sup> Native Vegetation Council, *Annual Report* (2019-20).

<sup>3</sup> *Native Vegetation Act 1991* (SA) s 6(a)(iii).

<sup>4</sup> Native Vegetation Council, *Annual Report* (2019-20).

## Community interaction with the Native Vegetation Act

### 3. To investigate into the level of awareness, education and engagement of the community on the Native Vegetation Act.

#### Regulated and significant tree regime

The current relationship between the *Native Vegetation Act* and the *Planning, Development and Infrastructure Act 2016* regulated tree regime is complex and difficult to understand and apply.

The combination of the *Planning, Development and Infrastructure Act 2016*,<sup>5</sup> the *Planning Development and Infrastructure (General) Regulations 2017*<sup>6</sup> and the exemptions<sup>7</sup> in the *Native Vegetation Regulations 2017* results in a complex, difficult to navigate labyrinth that is challenging for individuals to navigate and ascertain what, can and cannot legally be done.

Simplification and clarification of this scheme supports the conservation and protection of native vegetation<sup>8</sup> in South Australia as the community will be able to understand their roles and responsibilities more easily in relation to the regime. Increased understanding of responsibilities supports the reduction of accidental loss of native vegetation across the state.

Importantly, a simplification of the scheme should not make it easier for regulated or significant trees to be removed in urban areas where the state government's target to increase urban tree canopy cover by 20% applies.

***Recommendation 2: The Committee consider how the regulated tree regime can be simplified and made easier for the community to understand and apply in practice.***

## Native Vegetation, road reserves and offsets

### 4. Investigate the management of native vegetation in regard to road reserves and other property, including financial and vegetation offsets.

#### Road reserves

South Australian councils manage 11% (75,000km) of Australia's local road network. Road safety and management is a key concern for councils in South Australia. In 2019 the LGA, member councils and other key stakeholders developed the [Guide to a Local Government Road Safety Strategy and Action Plan](#). This Strategy and Action Plan acknowledges that councils have a role in taking action to reduce road trauma, given that roads controlled by local government account for more than 50% of serious casualties across the state.

Local government acknowledges that it can influence road safety by improving safety on roads it owns and manages<sup>9</sup> and that poorly or inadequately maintained roads exacerbate the impact of human error, contributing to road fatalities and serious injuries.<sup>10</sup>

<sup>5</sup> (SA) s 137(1).

<sup>6</sup> (SA) 3F(4)(d).

<sup>7</sup> Please note: most of these "exemptions" still require some form of approval or consent of the Native Vegetation Council (or another authority).

<sup>8</sup> *Native Vegetation Act 1991* (SA) s 6(a).

<sup>9</sup> LGA of SA (2019) *Guide to Local Government Road Safety Strategy and Action Plan*, page 5.

<sup>10</sup> *Ibid* page 9.

The Native Vegetation Council highly values the ecological benefits of roadside native vegetation<sup>11</sup> and under *Native Vegetation Regulations 2017* section 11(23) has developed guidelines for its management.<sup>12</sup>

The Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation (“the Guidelines”) “provide the parameters for councils and the Department of Planning, Transport and Infrastructure to manage native vegetation in road reserves to maintain safety and visibility of roadsides while retaining important native vegetation values”<sup>13</sup>, in accordance with Regulation 11(23).<sup>14</sup>

Local government across the state has highlighted practical concerns with the Guidelines. The operating requirements outlined in the Guidelines<sup>15</sup> assume a level of ecological or local botanical knowledge beyond that of council works staff, for example, and limits the use of machinery to manage roadside native vegetation.

To undertake works outside the parameters of the Guideline (eg. clearances within the primary envelope, secondary envelope or verge) local government is required to develop a Roadside Management Plan.

Undertaking works outside the parameters in the Guideline is often necessary to meet the expected safety requirements for road usage.

As part of developing a Roadside Vegetation Management Plan there is a requirement to have “sufficient information relating to the condition and conservation values of the vegetation that is present on a local council’s roadsides.”<sup>16</sup> The Guidelines acknowledge financial and time limitations faced by local councils in developing these plans and offers an alternative option where councils can undertake an assessment of their roads over time and where necessary.<sup>17</sup>

Unfortunately, this approach fails to address other limitations experienced by councils in managing roadside native vegetation. A lack of ecological expertise amongst council staff and the capacity of councils with limited staff to undertake adequate consultation with the community, CFS and other relevant groups to develop the Plan is a barrier faced by small regional councils.

If a coordinated approach is not undertaken it may result in a conflict of responsibilities. This is particularly relevant in the creation of fuel breaks<sup>18</sup> and fire access tracks<sup>19</sup> for fire management purposes where the CFS, landowners and councils are often required to collaborate to identify suitable locations.

Finally, a key barrier for local government, is the implementation of these plans. The Guidelines do not recommend the use of certain machinery, like graders for example, which enable a timely, practical and cost effect method of roadside vegetation clearance.

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<sup>11</sup> Native Vegetation Council, *Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation* (September 2020) page 4.

<sup>12</sup> Ibid.

<sup>13</sup> Native Vegetation Council, *Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation* (September 2020) page 4.

<sup>14</sup> *Native Vegetation Regulations 2017* (SA).

<sup>15</sup> Above note 13, page 9.

<sup>16</sup> Native Vegetation Council, *Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation* (September 2020) page 30.

<sup>17</sup> Ibid.

<sup>18</sup> Department for Environment and Water, *Managing Native Vegetation: How to Reduce the Impact of Bushfire* (August 2020) page 7.

<sup>19</sup> Ibid page 8.



South Australia's Deputy Coroner highlighted the need for a sensible approach to the management of roadside vegetation;

*"The proliferation of roadside vegetation, like any other flammable vegetation, has to be managed in a sensible way."<sup>20</sup>*

The LGA is supportive of a sensible and practical approach to the management of roadside vegetation that facilitates and enables responsibility and cost sharing amongst landowners and state and local government.

***Recommendation 3: The Committee recommend state government, in collaboration with local government, strategic stakeholders and landowners, work together to develop sensible, efficient and practical arrangements to manage roadside native vegetation that includes responsibility and cost sharing opportunities.***

## Offsets

Native vegetation must not be cleared unless approval is granted by the Native Vegetation Council or under the *Native Vegetation Regulations 2017 (SA)*.

For consent to be given for certain types of clearance of native vegetation under the Act, a Native Vegetation Council must be satisfied that actions will be taken to mitigate the impacts of the approved vegetation clearance.

This is known under the *Native Vegetation Act* as a significant environment benefit offset. A payment to the Native Vegetation Fund can be an accepted form of offset.<sup>21</sup> Alternatively, landowners who have native vegetation to protect on their land may be able to generate significant environmental benefit (SEB) credits to sell to clearance applicants who need to offset their activities. Credits are generated by entering into a management agreement for a designated site and implementing agreed actions, such as pest control, to ensure biodiversity gains.

This process results in additional costs for councils and others looking to undertake development in areas where the Act applies, noting that the Act applies to all regional councils across South Australia and only few parts of some metropolitan councils.<sup>22</sup>

This additional cost can be seen as a disincentive for development in areas that are required to pay offsets or manage offset credit sites to provide local infrastructure and stimulate local investment.

While it is recognised that protecting native vegetation is important, broad brush application of the Act could be seen as a deterrent to growth in regional areas.

***Recommendation 4: The Committee consider alternate offset options so not to deter from vital planning and development opportunities in regional areas.***

<sup>20</sup> *Inquest into the Deaths of Star Ellen Borlase, Jack Morley Borlase, Helen Kald Castle, Judith Maud Griffith, Jody Maria Kay, Trent Alan Murane and Neil George Richardson* (2007) South Australian Coroner's Court, at 24.29 page 561.

<sup>21</sup> *Native Vegetation Act (SA)* s 29(11)(d).

<sup>22</sup> <https://www.environment.sa.gov.au/topics/native-vegetation/clearing/maps>



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