



Legislative Assembly for the Australian Capital Territory

Standing Committee on Planning,
Transport and City Services

Inquiry into Urban Forest Bill 2022

Legislative Assembly for the Australian Capital Territory
Standing Committee on Planning, Transport and City Services

Approved for publication

Report 11
10th Assembly
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About the committee

Establishing resolution

The Assembly resolved to establish the Standing Committee on Planning, Transport, and City Services on 2 December 2020, amended on 11 February 2021, 30 March 2021, 22 April 2021, 16 September 2021, 9 November 2021, 10 February 2022, 5 April 2022 and 4 August 2022.

The committee is responsible for examining the following areas:

- City Renewal Authority
- Suburban Land Agency
- Planning and Land Management (excluding parks and conservation)
- Transport
- City Services including waste and recycling
- Housing (excluding service provision)
- Building and Construction

You can read the full establishing resolution [on our website](#).

Committee members

Ms Jo Clay MLA, Chair

Ms Suzanne Orr MLA, Deputy Chair

Mr Mark Parton MLA

Secretariat

Joanne Cullen, Committee Secretary (until 9 September 2022)

Kate Mickelson, Assistant Secretary (until 9 September 2022), Acting Committee Secretary (from 12 September 2022)

Miona Ikeda, Assistant Secretary

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About this inquiry

The Urban Forest Bill 2022 was presented in the Assembly on 3 August 2022. It was then referred to the Standing Committee on Planning, Transport and City Services as required by clause 5 of the establishing resolution. This clause allows committees to inquire into and report on bills within two months of their presentation.

The Committee decided to inquire into the Bill on 11 August 2022.

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Acronyms and abbreviations

Acronym	Long form
ACT	Australian Capital Territory
The Bill	Urban Forest Bill 2022
The commissioner	The Commissioner for Sustainability and the Environment
The Committee	Standing Committee on Planning, Transport and City Services
The conservator	The ACT Conservator for Flora and Fauna
EPSDD	Environment, Planning and Sustainable Development Directorate
FTE	Full time equivalent
HIA	Housing Industry Association Limited
ISCCC	Inner South Canberra Community Council
KBRG	Kingston and Barton Residents Group
m	metres
MBA	Master Builders Association of the ACT
MLA	Member of the Legislative Assembly
OCSE	Office of the Commissioner for Sustainability and the Environment
QTON	Question Taken On Notice
RZ1	Residential Zone 1
Scrutiny Committee	Standing Committee on Justice and Community Safety (Legislative Scrutiny)
TCCS	Transport Canberra and City Services
TPA	<i>Tree Protection Act 2005</i>

Recommendations

Recommendation 1

The Committee recommends that the Bill be amended to specify that the size of a tree for which an application for approval of tree damaging activity is made, is the size of that tree at the time the application is made.

Recommendation 2

The Committee recommends that the review of legislation to be undertaken two years after commencement to address whether the tree dimension parameters are achieving the policy objectives.

Recommendation 3

The Committee recommends that the ACT Government establish clear linkages to existing laws and policies, such as the Action Plan to Prevent Loss of Mature Native Trees, and a clear framework about how to protect remnant trees and mature trees, particularly in new development areas.

Recommendation 4

The Committee recommends that the ACT Government consider the appropriateness of tree species as part of future urban planting with regard to the risk of damage from severe weather events.

Recommendation 5

The Committee recommends that the ACT Government consider the importance of tree distribution for minimising urban heat island effect when assessing tree-damaging activity applications.

Recommendation 6

The Committee recommends that the Bill be amended so the Tree Advisory Panel includes at least one representative of traditional custodians, one environmental scientist and one Registered Landscape Architect.

Recommendation 7

The Committee recommends that the ACT Government consider suitable replacements for pest trees that are removed.

Recommendation 8

The Committee recommends that the ACT Government consider whether the policy which covers canopy targets addresses how a good spatial distribution of canopy can be achieved, and where suburbs already have a 30 percent canopy, how that canopy can be maintained.

Recommendation 9

The Committee recommends that the Bill be amended to specify that applications, notifications and decisions on tree damaging activity be published on the Transport Canberra and City Services website.

Recommendation 10

The Committee recommends that the ACT Government provide additional FTE resources for applications, processing, compliance and enforcement so that the Tree Protection Unit in TCCS, the statutory planning team in EPSDD, the conservator and any other areas involved can process applications quickly, conduct inspections and enforce breaches of the legislation.

Recommendation 11

The Committee recommends that the Bill be amended to specify in clause 32 that decisions on applications for approval in urgent circumstances should be notified to the applicant as soon as practicable after receipt of the application.

Recommendation 12

The Committee recommends that the ACT Government review the scale of contributions to the Canopy Contribution Fund two years after commencement to determine whether fees are set at a level that achieves the policy objectives.

Recommendation 13

The Committee notes the concern that the building and construction industry has with this Bill and recommends that the ACT Government provide a briefing to the industry so that the sector can better understand the requirements of the Bill.

Recommendation 14

The Committee recommends the ACT Government continue to work closely with key stakeholders in the building industry and in the community during the implementation of the Act.

Recommendation 15

The Committee recommends that the Bill be amended to make clear the criteria by which the decision-maker will determine the conditions of a canopy contribution agreement under subclause 36(2).

Recommendation 16

The Committee recommends that the ACT Government increase awareness and educate the ACT community on canopy contribution agreements and their administration.

Recommendation 17

The Committee recommends that, after considering and responding to the recommendations in this report, the Assembly pass the Urban Forest Bill 2022.

1. Introduction

Background to the Bill

- 1.1. The Urban Forest Bill 2022 (the Bill) replaces the *Tree Protection Act 2005* (TPA). The purpose of the Bill is to provide a legislative framework for managing trees on private and public land in line with the objective of reaching a 30 percent tree canopy coverage in Canberra by 2045. This target was set out in the *ACT Climate Change Strategy 2019-25* and the *Living Infrastructure Plan*.¹ This Bill also seeks to strengthen and improve the management of the ACT's urban forest.²
- 1.2. The Bill includes many elements from the TPA, including:
- the establishment of a register of significant trees with appropriate levels of protection;
 - approval requirements for tree damaging activities;
 - approval requirements for groundwork activities within the tree protection zone of a protected tree;
 - approval requirements for tree management plans;
 - ability to make directions with regard to tree protection matters; and
 - provide offences and enforcement provisions.³
- 1.3. The Bill will also introduce several new elements, including:
- an updated definition of protected trees including new size requirements for protected trees;
 - the inclusion of trees on public land;
 - the introduction of a canopy contribution framework; and
 - tree bonds and an updated compliance framework.⁴
- 1.4. The Bill updates the definition of protected trees, extending legal protections to more regulated trees⁵ as well as to registered and remnant trees in future urban areas. The Bill also extends legislative protection to all public trees.⁶
- 1.5. The Bill introduces a Canopy Contribution Framework which establishes canopy contribution agreements to ensure that live trees approved for removal are replaced. This framework does not remove or reduce existing restrictions on tree removal but establishes

¹ ACT Government, [ACT Climate Change Strategy 2019-25](#), p 11; ACT Government, [Canberra's Living Infrastructure Plan \(act.gov.au\)](#), p 1.

² Urban Forest Bill 2022, *Explanatory Statement*, p 2.

³ Urban Forest Bill 2022, *Explanatory Statement*, p 2.

⁴ Urban Forest Bill 2022, *Explanatory Statement*, pp 2–3.

⁵ Regulated trees are those on leased land which meet minimum size requirements, Urban Forest Bill 2022, cl 11.

⁶ Urban Forest Bill 2022, *Explanatory Statement*, p 3.

a mechanism for incentivising tree retention or onsite replanting of trees approved for removal.⁷

- 1.6. The Bill introduces Tree Bonds, with a compliance framework, to strengthen compliance with tree protection measures. This reform will support existing tree protection plans and requirements and promote clear understanding and equal application of tree protection requirements across industry and the community in the ACT.⁸
- 1.7. The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.⁹

Conduct of the inquiry

- 1.8. The Committee issued a call for submissions on 12 August 2022, which closed on 23 September 2022. A total of 16 submissions was received by the Committee. A list of all the submissions is provided at **Appendix A**.
- 1.9. On 21 September 2022, pursuant to a motion in the Chamber, the Committee was given leave to extend the due date of this report to 22 November 2022.
- 1.10. The Committee held a public hearing on 6 October 2022 and heard from 16 witnesses. A list of witnesses who appeared before the Committee is provided at **Appendix B**. The transcript of proceedings is accessible at https://www.hansard.act.gov.au/Hansard/10th-assembly/Committee-transcripts.htm#6_ptcs.
- 1.11. The Committee met on 17 November 2022 to consider the Chair's draft report, which was adopted on the same day, for tabling on 22 November 2022.

Acknowledgements

- 1.12. The Committee thanks everyone who participated in, or otherwise assisted, this inquiry, including Mr Chris Steel MLA in his capacity as Minister for Transport and City Services and accompanying directorate officials.

⁷ Urban Forest Bill 2022, *Explanatory Statement*, p 3.

⁸ Urban Forest Bill 2022, *Explanatory Statement*, p 3.

⁹ ACT Legislation Register, *Human Rights Act 2004*, [Human Rights Act 2004 | Acts](#).

2. Bill Summary

2.1. This section outlines the key features of the Bill.

Part 1 – Preliminary

2.2. Part 1 contains administrative provisions for the proposed Bill, including the naming of the Act, once passed, as the Urban Forest Act 2022.¹⁰

2.3. The Act will commence on 1 July 2023.¹¹

Part 2 – Objects and important concepts

2.4. Part 2 of the Bill sets out the objects of the Bill, which are:

- (a) to support a resilient and sustainable urban forest that contributes to community wellbeing in a changing climate; and
- (b) to protect and enhance the urban forest by recognising its value, including cultural and heritage value; and
- (c) to contribute to biodiversity in urban areas; and
- (d) to support a target of 30% tree canopy cover across the of the Territory's urban areas.¹²

2.5. Part 2 also provides definitions of urban forest, built-up urban area, protected tree, registered tree, regulated tree, remnant tree, and protection zone for protected tree.¹³

2.6. The Bill expands the definition of protected trees to include registered trees, regulated trees and public trees in built-up urban areas, and registered or remnant trees in future urban areas.¹⁴

2.7. The Bill also expands the definition of regulated trees. Clause 11 reduces the minimum height or canopy width for living trees on leased land to 8m (previously 12m under the TPA), and trunk circumference to 1m, 1.4m above ground level (previously 1.5m, 1m above ground level), and includes trees of any size planted not more than five years under a canopy contribution agreement or in accordance with a tree protection condition of a development approval, and dead native trees on leased land with circumference of at least 1.88m, 1.4m above ground level.

¹⁰ Urban Forest Bill 2022, cl 1.

¹¹ Urban Forest Bill 2022, cl 2.

¹² Urban Forest Bill 2022, cl 6.

¹³ Urban Forest Bill 2022, cl 7–13.

¹⁴ Under the TPA, only registered and regulated trees are protected trees. *Tree Protection Act 2005*, [Tree Protection Act 2005 | Acts](#), Part 2.

Part 3 – Protection of trees

- 2.8. Part 3 of the Bill sets out what constitutes damage to a tree and the meaning of prohibited groundwork.¹⁵ It establishes offences relating to damaging protected trees or doing prohibited groundwork, and the maximum penalty units that apply.¹⁶ Provisions for approval of tree damaging activities are also set out in this chapter.¹⁷
- 2.9. Subdivision 3.3.2 of the Bill establishes the canopy contribution framework, which will ensure live trees approved for removal are replaced through establishing canopy contribution agreements with applicants as a condition of tree removal. Canopy contribution agreements will require replanting on site where possible, or equivalent financial contribution where replanting is not possible.¹⁸
- 2.10. Division 3.4 of the Bill sets out provisions for tree protection directions and tree reparation directions. The Conservator of Flora and Fauna (the conservator) may determine criteria for the giving of tree protection directions to do or not do something to protect a protected tree,¹⁹ and tree reparation directions may be made when a person causes unauthorised damage to a protected tree.²⁰

Part 4 – Registration of trees

- 2.11. Part 4 of the Bill sets out the provisions for registration of trees, including establishing the Tree Register.²¹ Clause 52 empowers the Minister to determine criteria for registration, or cancellation of registration of a tree.²² Anyone may nominate a tree for registration, but the conservator may refuse to consider a nomination if satisfied that the nomination is frivolous or vexatious.²³
- 2.12. Clause 69 of the Bill empowers the conservator to declare a protection zone for a registered tree to be a declared site. This declaration has effect for five years, or for a longer period if stated in the declaration. A site declaration is a notifiable instrument.²⁴

Part 5 – Management of trees

- 2.13. Division 5.1 of the Bill sets out the provisions for tree management plans for protected trees on leased land or registered trees on public unleased land.²⁵
- 2.14. Division 5.2 of the Bill establishes a bond scheme whereby, if the conservator is satisfied on reasonable grounds that a protected tree is at risk of damage from activity associated with

¹⁵ Urban Forest Bill 2022, cl 14–15.

¹⁶ Urban Forest Bill 2022, cl 16–17.

¹⁷ Urban Forest Bill 2022, cl 18–33.

¹⁸ Urban Forest Bill 2022, *Explanatory Statement*, p 3.

¹⁹ Urban Forest Bill 2022, subcl 43(1), 44(1).

²⁰ Urban Forest Bill 2022, subcl 48(1).

²¹ Urban Forest Bill 2022, *Explanatory Statement*, p 24.

²² Urban Forest Bill 2022, cl 52.

²³ Urban Forest Bill 2022, cl 54.

²⁴ Urban Forest Bill 2022, cl 69.

²⁵ Urban Forest Bill 2022, cl 78–90.

a tree management plan, a public unleased land permit or a tree protection condition of a development approval, the applicant for activity may be required to lodge a bond with the Territory as security for their obligation to protect the tree.²⁶

- 2.15. Division 5.3 of the Bill establishes the Tree Advisory Panel, which is to have at least three members, each with extensive knowledge in one or more of arboriculture, forestry, and horticulture. Members of the advisory panel are to be appointed by the Minister.²⁷
- 2.16. The function of the advisory panel is to advise the conservator on anything relevant to the conservator's functions in relation to tree protection, including applications for approval of tree damaging activities, tree management plans and tree registration.²⁸

Part 6 – Development applications – conservator's advice

- 2.17. Part 6 of the Bill sets out provisions for the conservator to provide advice about tree protection on land subject to development.²⁹
- 2.18. The conservator's advice to the planning and land authority is provided to support the authority's capacity to make decisions regarding tree protection relating to protected trees subject to proposed Development Applications. The authority may only approve a Development Application contrary to the conservator's advice when, considering broader planning objectives of the Territory Plan, all reasonable design options have been considered to avoid the need to undertake the proposed prohibited activity.³⁰

Part 7 – Enforcement

- 2.19. Part 7 of the Bill empowers the director-general to appoint authorised people who may enter premises to inspect a registered tree or give a tree protection direction.³¹ The powers and requirements of authorised people relating to seizure of things, warrants, damage and compensation are detailed in this part.³²

Part 8 – Notification and review of decisions

- 2.20. Part 8 of the Bill sets out the provisions for notification and review of decisions. Types of reviewable decisions, and the entities who must be notified of these and who can apply for a review of the decision, are listed in schedule 1 of the Bill.³³

²⁶ Urban Forest Bill 2022, cl 91–96.

²⁷ Urban Forest Bill 2022, cl 97–99.

²⁸ Urban Forest Bill 2022, cl 100.

²⁹ Urban Forest Bill 2022, *Explanatory Statement*, p 31.

³⁰ Urban Forest Bill 2022, *Explanatory Statement*, p 32.

³¹ Urban Forest Bill 2022, cl 114.

³² Urban Forest Bill 2022, Part 7.

³³ Urban Forest Bill 2022, Schedule 1.

Part 9 – Miscellaneous

- 2.21. Part 9 of the Bill sets out provisions not covered elsewhere in the Bill, including empowering the Minister to apply or disapply the proposed Act to entities or activities, to approve a code of practice for dealing with protected tree disputes, and to determine fees.³⁴ Clause 144 empowers the Executive to make regulations, including to create offences and fix penalties of not more than 10 penalty units.³⁵
- 2.22. Clause 145 of the Bill requires that the Minister review the operation of the Act two years after its commencement and report on the review to the Assembly.³⁶

Part 10 – Repeals and Part 20 – Transitional

- 2.23. The Bill repeals the TPA and the *Magistrates Court (Tree Protection Infringement Notices) Regulation 2006*.³⁷
- 2.24. Transitional arrangements apply to:
- applications made for approval of tree damaging etc activity before commencement day;
 - approvals in force before commencement;
 - approvals in force with uncommenced extension;
 - applications for tree management plans made before commencement day;
 - nominations for tree registration before commencement day;
 - provisional registration of trees before commencement day;
 - registration of trees before commencement day;
 - proposals to cancel tree registration made before commencement day;
 - Aboriginal heritage trees under the repealed Act;
 - site declarations made before commencement day;
 - declarations under section 64 and approvals under section 66 of the repealed Act;
 - tree protections in force before commencement day; and
 - authorised people.³⁸

³⁴ Urban Forest Bill 2022, cl 137, 139, 143.

³⁵ Urban Forest Bill 2022, cl 144.

³⁶ Urban Forest Bill 2022, cl 145.

³⁷ *Magistrates Court (Tree Protection Infringement Notices) Regulation 2006*, [Magistrates Court \(Tree Protection Infringement Notices\) Regulation 2006 | Subordinate laws \(act.gov.au\)](#)

³⁸ Urban Forest Bill 2022, Part 20.

3. Legislative Scrutiny

- 3.1. This chapter will discuss comments from the Standing Committee on Justice and Community Safety (Legislative Scrutiny) (Scrutiny Committee).
- 3.2. The Scrutiny Committee raised several concerns with the bill in Scrutiny Report 20³⁹ (the Scrutiny Report).

Human Rights Act 2004

- 3.3. The Scrutiny Committee noted that, in the discussion on potential limitations on privacy in the explanatory statement accompanying the Bill, reference is made to the power given to the director-general to carry out work to repair damage done to a protected tree, or remove or replace the tree, where a person fails to comply with a tree reparation directive. The director-general can recover the reasonable costs of carrying out the work. However, there is no express authority for the director-general, their delegate, or other authorised person to enter private property to carry out such repair work.⁴⁰
- 3.4. This is in contrast to clause 47 of the Bill, which provides for entry by authorised persons to take action set out in a tree protection direction. Under this provision, the reasonable cost of the work carried out is recoverable as a debt to the Territory, damage caused in carrying out the work must be minimised and compensation for any damage caused may be payable. Clause 47 also sets out that written notice must be given before such entry, and the contents of the notice.⁴¹
- 3.5. The Scrutiny Committee has drawn this matter to the attention of the Assembly and has asked that, before the Bill is debated, the Minister provide further information on why the protections of Clause 47 were not similarly provided in the case of work done under a tree reparation direction.⁴²
- 3.6. The Bill also establishes offences with a fault element of negligence: where a person is negligent about whether conduct would damage the tree, prohibited groundwork is done within a protected trees protection zone or a declared site, or a person negligently fails to comply with a tree protection direction.⁴³
- 3.7. Culpability for negligence in these circumstances may rely only on assessment of objective circumstances and therefore may potentially limit the right to presumption of innocence.⁴⁴

³⁹ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 5.

⁴⁰ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 5.

⁴¹ Urban Forest Bill 2022, cl 47.

⁴² Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 5.

⁴³ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 6.

⁴⁴ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 6.

- 3.8. The Scrutiny Committee noted that the explanatory statement accompanying the Bill does not include a justification for the inclusion of negligence for the offences in question.⁴⁵
- 3.9. The Scrutiny Committee has drawn this matter to the attention of the Assembly and has asked that, before the Bill is debated, the Minister provide information on why negligence is considered an appropriate standard for the offences in question and consider amending the explanatory statement to include this information.⁴⁶

Delegation of legislative powers

- 3.10. Clause 144 of the Bill allows for the creation of offences by regulation, with a maximum penalty of not more than 10 penalty units. The Scrutiny Committee noted that there is no justification for such a power in the explanatory statement.⁴⁷
- 3.11. The Scrutiny Committee has drawn this matter to the attention of the Assembly and has asked that, before the Bill is debated, the Minister provide a justification for the creation of offences in regulation, and why any likely offences are not included in primary legislation, or the scope of potential offences more closely defined.⁴⁸

Henry VIII clause

- 3.12. The Scrutiny Report raised concerns that proposed Part 20 of the Bill authorises the making of transitional regulations. The Bill will also allow regulations which modify the proposed Part 20. The Scrutiny Committee noted that, while any transitional regulations are not expressed as having the effect of overriding any other territory legislation, the provision allows regulations to be made which may have the effect of overriding the primary enactment. This provision is therefore a form of ‘Henry VIII clause’.⁴⁹
- 3.13. A ‘Henry VIII clause’ is a provision in an Act that allows for delegated laws to amend an Act of Parliament.⁵⁰ As a ‘Henry VIII clause’ allows for delegated legislation to amend the primary legislation, such clauses detract from the legislative power of the Legislative Assembly.⁵¹
- 3.14. The explanatory statement accompanying the Bill notes the power to make transitional regulations and their potential to override the Act, and includes a justification for their inclusion:

⁴⁵ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 6.

⁴⁶ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 6.

⁴⁷ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 7.

⁴⁸ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 7.

⁴⁹ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 7.

⁵⁰ Australian Law Reform Commission, [Traditional Rights And Freedoms—Encroachments By Commonwealth Laws \(ALRC Interim Report 127\)](#), Chapter 16: Delegating Legislative Power, 3 August 2015, p 442.

⁵¹ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Henry VIII clauses](#), November 2011, p 3.

A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.⁵²

- 3.15. The Scrutiny Committee is concerned that this explanation may be applied generally to any transitional regulations and does not provide a justification for why the power to make transitional regulations which may vary primary enactments are needed in the context of this particular Bill, particularly given the scope of transitional provisions already included in proposed part 20.⁵³
- 3.16. The Scrutiny Committee has drawn this matter to the attention of the Assembly and has requested further information from the Minister prior to the Bill being debated.⁵⁴

Legislation Act 2001

- 3.17. Clause 142 of the Bill will allow a Territory Plan to apply, adopt, or incorporate a law of another jurisdiction or an instrument as in-force from time to time.⁵⁵ The Bill will also disapply subsection 47(6) of the *Legislation Act 2001* in relation to an Australian Standard applied, adopted or incorporated in a statutory instrument,⁵⁶ with the result that any Australian Standard so incorporated does not have to be made available on the ACT Legislation Register as a notifiable instrument.⁵⁷
- 3.18. The explanatory statement accompanying the Bill provides no justification for statutory instruments being permitted to incorporate other instruments, nor why they should not be required to be notified on the legislation register.⁵⁸
- 3.19. The Scrutiny Report noted that there may be copyright concerns with notification of Australian Standards. However, the Scrutiny Committee is of the view that incorporated Australian Standards may be made available for public inspection, or their incorporation limited to circumstances where they are otherwise available at a low cost or likely to be readily available to those affected by their incorporation.⁵⁹

⁵² Urban Forest Bill 2022, *Explanatory Statement*, p 41.

⁵³ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 7.

⁵⁴ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 7.

⁵⁵ Urban Forest Bill 2022, cl 142(1).

⁵⁶ Urban Forest Bill 2022, cl 142(2).

⁵⁷ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 8.

⁵⁸ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 8.

⁵⁹ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 8.

- 3.20. The Scrutiny Report noted that the Bill will displace notification obligations for a wide range of statutory instruments, many of which may affect individuals with limited access to any incorporated Australian Standard.⁶⁰
- 3.21. The Scrutiny Committee has drawn this matter to the attention of the Assembly and has requested further information from the Minister prior to the Bill being debated.⁶¹

⁶⁰ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 8.

⁶¹ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No 20](#), 13 September 2022, p 9.

4. Issues raised in evidence

- 4.1. This chapter sets out the issues raised on the Bill in evidence received by the Committee in submissions and at the public hearing.
- 4.2. It outlines support for the Bill from a range of stakeholders and discusses some of the concerns raised about the broader context of the Bill by stakeholders, along with the Committee's views and recommendations.

Support for the Bill

- 4.3. Evidence received by the Committee showed that most witnesses and submissions supported the intent of the Bill, although there were concerns about its implementation.⁶²
- 4.4. Professor Peter Kanowski, Co-Chair of Forestry Australia, ACT & Region, remarked:

... we support very strongly the principle of what the bill is trying to achieve. But the devil is in the detail, I think, in terms of how the approvals are given for removal of trees, what the right balance is between very cumbersome and too easy a set of processes, and what the canopy contribution cost is set at.⁶³

- 4.5. In its submission, Conservation Council ACT Region noted that the Bill provides an opportunity for the ACT to lead the way in tree regulation:

The Bill is a positive step towards protecting Canberra's trees and preserving the city's identity as the 'bush capital'. Trees are the backbone of the landscape, cleaning the air we breathe, stabilising the soil we walk on, cooling the climate around us, and caring for the species that we love. With this in mind, the Bill presents an opportunity for the ACT to lead the way in maintaining and enhancing the urban forest to deliver on climate resilience and biodiversity objectives.⁶⁴

- 4.6. Conservation Council ACT Region also expressed support for the redefinition of protected trees, including dropping the height threshold⁶⁵ and extending protection to remnant trees.⁶⁶

- 4.7. In its submission, Inner South Canberra Community Council (ISCCC) noted that:

... with respect to the Object relating to resilience and sustainability of the urban forest, the ISCCC is pleased that it has been expanded to refer to contributing to community wellbeing in a changing climate.⁶⁷

⁶² See, for example: Property Council of Australia (ACT Division), *Submission 10*, p 2; Forestry Australia, ACT & Region, *Submission 11*, pp 1–2; Conservation Council ACT Region, *Submission 13*, pp 12–14; Name withheld, *Submission 15*, p 1.

⁶³ Professor Peter Kanowski, Co-Chair of Forestry Australia, ACT & Region, *Committee Hansard*, p 3.

⁶⁴ Conservation Council ACT Region, *Submission 13*, p 14.

⁶⁵ Ms Helen Oakey, Executive Director, Conservation Council ACT Region, *Committee Hansard*, p 7.

⁶⁶ Conservation Council ACT Region, *Submission 13*, p 5.

⁶⁷ ISCCC, *Submission 8*, p 2.

- 4.8. The canopy contribution framework outlined in clauses 35 and 36 of the Bill was broadly supported by some submitters,⁶⁸ with Conservation Council ACT Region remarking that ‘It is important to reframe that trees have value, and that when they are to be removed, that value is recognised and compensated for’.⁶⁹
- 4.9. Other provisions of the Bill, including greater clarity regarding removal of trees to safeguard persons and property, tree management plans, and the ability to apply a declared site for a period longer than five years were explicitly supported in Kingston and Barton Residents Group’s (KBRG) submission.⁷⁰

Concerns raised in evidence

- 4.10. A number of concerns were raised in evidence received by the Committee, including:
- whether the revised definition of a protected tree would achieve the objects of the Bill;⁷¹
 - biodiversity considerations, including the value of native trees versus exotic trees, and appropriate species for urban planting;⁷²
 - canopy targets;⁷³
 - transparency, public notification and enforcement of decisions;⁷⁴ and
 - a potential increase in applications for tree damaging activity, and consequent delays in processing these, including where a tree is threatening lives or property.⁷⁵

Revised definition of protected tree

- 4.11. The Committee received contrasting evidence concerning whether the revised definition of a protected tree, in particular the specified dimensions for a regulated tree, would enable the Bill to achieve its objects.
- 4.12. Forestry Australia, ACT & Region, noted a need for flexibility in tree management:

... the wrong tree in the wrong place ... is a bad advertisement for trees and the values that they have. In our submission we suggested that, in whatever form the

⁶⁸ See, for example: Kingston and Barton Residents Group (KBRG), *Submission 3*, p 6; ISCCC, *Submission 8*, p 5; Forestry Australia, ACT & Region, *Submission 11*, p 1.

⁶⁹ Conservation Council ACT Region, *Submission 13*, p 12.

⁷⁰ KBRG, *Submission 3*, pp 4, 7, 8.

⁷¹ See, for example: Office for the Commissioner for Sustainability and the Environment (OCSE), *Submission 1*, p 3; Master Builders Association of the ACT (MBA), *Submission 5*, p 2.

⁷² See, for example: OCSE, *Submission 1*, pp 1–2, Name withheld, *Submission 7*, p 1; ACT Urban Woodland Rescue, *Submission 12*, p 1.

⁷³ See, for example: KBRG, *Submission 3*, pp 5–6; ISCCC, *Submission 8*, p 4; Forestry Australia, ACT & Region, *Submission 11*, p 1; ACT Urban Woodland Rescue, *Submission 12*, pp 5–6.

⁷⁴ See, for example: KBRG, *Submission 3*, pp 2–5; Jochen Zeil, *Submission 6*, p 1; ISCCC, *Submission 8*, pp 4–5; ACT Urban Woodland Rescue, *Submission 12*, p 10.

⁷⁵ See, for example: KBRG, *Submission 3*, p 4; MBA, *Submission 5*, p 2; ISCCC, *Submission 8*, p 4; HIA, *Submission 9*, pp 7–8; Property Council of Australia (ACT Division), *Submission 10*, pp 2–3.

bill ultimately is adopted, it needs some close monitoring and review after the first couple of years, in order to understand whether we have those settings right.

...

We should give it our best shot with the bill here, but we should be very watchful of how the outcomes play out and whether they are what we are trying to achieve.⁷⁶

- 4.13. In its submission, Conservation Council ACT Region noted that the dimension requirements for a regulated tree in the Bill were ‘inconsistent with other jurisdictions’, which on average have set height requirements for protected trees at 4.6m.⁷⁷ The Commissioner for Sustainability and the Environment (the commissioner) also noted this discrepancy in their submission.⁷⁸
- 4.14. Conservation Council ACT Region further noted that, while lower height requirements for regulated trees could increase the number of protected trees in the ACT, ‘evidence is that development in equivalent jurisdictions with similar requirements has been neither prevented nor delayed’.⁷⁹
- 4.15. However, Master Builders Association of the ACT (MBA) said in its submission that the change in definition would have ‘the impact of triggering significantly more applications to remove a tree’,⁸⁰ noting that ‘We were told verbally in one of the information sessions that we had with government that there might be a more than 100 percent increase in the number of applications generated’.⁸¹
- 4.16. In its submission, the Housing Industry Association (HIA) also expressed concern that the revised definition would ‘obviously draw many more plants into the list of regulated trees’, with ‘a significant likelihood of increasing the administrative burden on the industry and approval authorities’.⁸²
- 4.17. Ms Kirra Cox, Acting Executive Branch Manager, Strategic Policy and Programs, Transport Canberra and Business Services, TCCS, responded to these concerns:
- ...part of the purpose of this bill is to recognise that there is a bit of a hierarchy in what we would like people to do. The first preference is to keep the tree. If you keep the tree, you do not need to apply for anything.⁸³
- 4.18. KBRG noted that the reassessment of tree size during a lengthy application process for tree removal could cause significant further delay and expense for residents, as ‘trees continue

⁷⁶ Professor Peter Kanowski, Co-Chair, Forestry Australia, ACT & Region, *Committee Hansard*, p 3.

⁷⁷ Conservation Council ACT Region, *Submission 13*, pp 9–11.

⁷⁸ OCSE, *Submission 1*, p 2.

⁷⁹ Conservation Council ACT Region, *Submission 13*, p 10.

⁸⁰ MBA, *Submission 5*, p 2.

⁸¹ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 October 2022, p 24.

⁸² Housing Industry Australia Limited, *Submission 9*, p 6.

⁸³ Ms Kirra Cox, Acting Executive Branch Manager, Strategic Policy and Programs, Transport Canberra and Business Services, TCCS, *Committee Hansard*, 6 October 2022, p 41.

to grow during the time required to process the application’, citing an example where tree had been assessed five times during the application process.⁸⁴

Recommendation 1

The Committee recommends that the Bill be amended to specify that the size of a tree for which an application for approval of tree damaging activity is made, is the size of that tree at the time the application is made.

Committee comment

- 4.19. The Committee notes that clause 145 of the Bill requires a review of operation and effectiveness after two years.⁸⁵ Given the concerns expressed about the revised definition of a regulated tree and whether it will achieve the objects of the Bill, the Committee is of the view that the review should address whether the tree dimension parameters are achieving the policy objectives.

Recommendation 2

The Committee recommends that the review of legislation to be undertaken two years after commencement to address whether the tree dimension parameters are achieving the policy objectives.

Biodiversity considerations

- 4.20. In their submission, the commissioner raised a concern that native trees were not afforded more protection than exotic species⁸⁶, citing the *ACT Action Plan to Prevent Loss of Mature Native Trees*⁸⁷ as support for this.
- 4.21. In its submission, ISCCC noted its support for ensuring that ‘mature native trees are managed to support wildlife habitat and biodiversity. We recognise that the urban forest is as important for biodiversity as it is for canopy cover and all its other benefits’.⁸⁸
- 4.22. Conservation Council ACT Region said that the Bill ‘misses an opportunity to recognise the value of trees in the wider biodiversity context’,⁸⁹ and to recognise that biodiversity in urban areas enhances biodiversity outcomes throughout the ACT:

For example, if we look at the future urban areas that might be developed in the western edge, and we look at the Murrumbidgee corridor, there is work emerging that shows that there are connectivity corridors for species from the Murrumbidgee corridor right through to Black Mountain. Yes, there are

⁸⁴ KBRG, *Submission 3*, pp 4–5.

⁸⁵ Urban Forest Bill 2022, cl 145.

⁸⁶ OCSE, *Submission 1*, p 1.

⁸⁷ ACT Government, *Loss of Mature Native Trees Key Threatening Process Draft Action Plan*, [Loss of Mature Native Trees Draft Action Plan \(amazonaws.com\)](https://www.amazonaws.com) (accessed 22 October 2022).

⁸⁸ ISCCC, *Submission 8*, p 5.

⁸⁹ Ms Helen Oakey, Executive Director, Conservation Council ACT Region, *Committee Hansard*, 6 October 2022, p 7.

biodiversity outcomes at Black Mountain, but there are also wider biodiversity outcomes for species across the south-east landscape of New South Wales, and this bill has a role in contributing to those outcomes.⁹⁰

- 4.23. Conservation Council ACT Region also identified some benefits and drawbacks of native species in an urban context, noting that large eucalypts are not always suitable, and that because of different growth rates, trees of similar size may not necessarily be the same in value:

A native tree may take longer to grow, but it may provide additional biodiversity benefits in terms of habitat, food and foraging opportunities for native birds and other species.⁹¹

- 4.24. Forestry Australia, ACT & Region, noted that native and exotic trees serve different purposes, and both provide benefit to the urban forest:

The value of natives, essentially, is in biodiversity services. In particular, older native trees, older eucalypts, are very important habitat and food sources. They are not the only native trees that are good as urban trees. Eucalypts in particular have some downsides as urban trees, because of their propensity to shed their limbs at inconvenient times and in inconvenient places.

We have a city that currently has a character that is defined in different places by natives or exotics, and sometimes some of both. As a general principle, we want to continue that. Some exotics are well adapted to our environment and they are well suited to the stressors of urban life ... if we were to, for example, shift the balance towards more exotics and fewer natives, we would suffer the loss of biodiversity values that many Canberrans appreciate—our bird fauna, in particular, and lots of other native wildlife.

The tagline for Forestry Australia is “The right tree in the right place at the right time”. You can see how that applies in the urban context as well.⁹²

- 4.25. In *Report 7: Inquiry into West Belconnen supercell thunderstorm*, the Standing Committee on Health and Community Wellbeing noted the prominence of large mature eucalyptus trees in suburbia as a specific issue in causing damage during and after storms.⁹³ The report includes a recommendation that the ACT Government consider the appropriateness of tree species as part of future urban planting with regard to risk of damage from severe weather events.⁹⁴
- 4.26. The Committee is of the view that the ACT Government should establish clear linkages to existing laws and policies regarding protection of remnant trees and mature trees and

⁹⁰ Ms Helen Oakey, Executive Director, Conservation Council ACT Region, *Committee Hansard*, 6 October 2022, p 9.

⁹¹ Ms Helen Oakey, Executive Director, Conservation Council ACT Region, *Committee Hansard*, 6 October 2022, p 8.

⁹² Professor Peter Kanowski, Co-Chair, Forestry Australia, ACT & Region, *Committee Hansard*, 6 October 2022, p 2.

⁹³ Standing Committee on Health and Community Wellbeing, *Report 7: Inquiry into West Belconnen supercell thunderstorm*, p 13 (para 2.34).

⁹⁴ Standing Committee on Health and Community Wellbeing, *Report 7: Inquiry into West Belconnen supercell thunderstorm*, Recommendation 8.

should consider the appropriateness of tree species as part of future urban planning with regard to the factors outlined above.

Recommendation 3

The Committee recommends that the ACT Government establish clear linkages to existing laws and policies, such as the Action Plan to Prevent Loss of Mature Native Trees, and a clear framework about how to protect remnant trees and mature trees, particularly in new development areas.

Recommendation 4

The Committee recommends that the ACT Government consider the appropriateness of tree species as part of future urban planting with regard to the risk of damage from severe weather events.

- 4.27. In its submission, Conservation Council ACT Region noted that the urban forest provides shade and mitigates the ‘heat island effect’.⁹⁵ Professor Peter Kanowski of Forestry Australia, ACT & Region explained that trees provide cooling both through direct shade and through transpiration:

Mostly, it is direct shading. Part of it is transpiration ... Part of it is just the recycling of moisture from the canopy. Most people are familiar with the shading; it depends where the tree is, what sort of tree it is, what the aspect of the house is or where it is in the street or cycle path. That is an outcome that you achieve with a small number of trees, perhaps, around a property.

The cooling effect, the transpiration effect, is from the aggregation of trees—the level of canopy across a neighbourhood, for example.⁹⁶

- 4.28. In its submission, ACT Urban Woodland Rescue expressed concern that the removal of mature trees and vegetation would increase urban heat island effects, resulting in a less resilient urban landscape with increased vulnerability to climate change.⁹⁷

Recommendation 5

The Committee recommends that the ACT Government consider the importance of tree distribution for minimising urban heat island effect when assessing tree-damaging activity applications.

⁹⁵ Conservation Council ACT Region, *Submission 13*, p 3.

⁹⁶ Professor Peter Kanowski, Co-Chair, Forestry Australia, ACT & Region, *Committee Hansard*, p 5.

⁹⁷ ACT Urban Woodland Rescue, *Submission 12*, p 1.

- 4.29. Several witnesses raised concerns that the Bill does not construe or consider the urban forest within the wider landscape context, focuses too much on canopy coverage and does not protect native urban biodiversity in the ACT's urban forests.⁹⁸
- 4.30. In its submission ACT Urban Woodland Rescue argued that the Bill's focus on canopy coverage 'recasts trees as generic parts of a mixed species forest plantation allowing them to be treated as disposable objects' and 'devalues the qualities of individual trees like their age, species, whether they have hollows, where they are located in the landscape including landscape connectivity and the share and other benefits they provide'.⁹⁹
- 4.31. Conservation Council ACT Region submitted that the object of the Bill specified in subclause 6(c), 'to contribute to biodiversity in urban areas' does not consider how the urban forest relates to biodiversity outside of urban areas. They noted that enhanced connectivity in urban areas provides support for species as they move through the landscape, and that planting natives and endemic species within urban areas can help limit weed infestation.¹⁰⁰
- 4.32. The Australian Institute of Landscape Architects (ACT Chapter) expressed similar concerns in their submission, noting that 'biodiversity, ecological connectivity and the diverse green infrastructure [are] benefits that accrue by managing the urban forest as a landscape system'. Australian Institute of Landscape Architects (ACT Chapter) suggested that the composition of the Tree Advisory Panel should be broadened to ensure cultural and ecological values are addressed.¹⁰¹

Committee comment

- 4.33. The Committee is of the view that, given its important role in advising the conservator on matters relating to the applications for tree-damaging activity and the registration of trees, membership of the Tree Advisory Panel should be expanded to include more perspectives on approaches to tree protection, and should include at least one representative of traditional custodians, an environmental scientist and a Registered Landscape Architect.

Recommendation 6

The Committee recommends that the Bill be amended so the Tree Advisory Panel includes at least one representative of traditional custodians, one environmental scientist and one Registered Landscape Architect.

- 4.34. Concerns about removal of pest trees were raised in a number of submissions.¹⁰²
- 4.35. In its submission, KBRG notes that the Bill:

⁹⁸ See, for example: Conservation Council ACT Region, *Submission 13*, pp 2, 3; Australian Institute of Landscape Architects, *Submission 14*, p 1; ACT Urban Woodland Rescue, *Submission 12.1*, p 2.

⁹⁹ ACT Urban Woodland Rescue, *Submission 12*, p 3.

¹⁰⁰ Conservation Council ACT Region, *Submission 13*, pp 3–4.

¹⁰¹ Australian Institute of Landscape Architects, *Submission 14*, p 2.

¹⁰² See, for example: ISCCC, *Submission 8*, p 4; KBRG, *Submission 3*, p 7; Conservation Council ACT Region, *Submission 13*, p 13.

...implies that a pest plant of regulated size is not regulated under the Act and because it is not covered by the Act it may be removed with no replacement being necessary. However, there are some provide residences currently with over 60% canopy where this coverage is largely due to mature pest trees.

Removal of the pest trees and failure to replace the trees would drastically reduce amenity and would fail to increase canopy cover.¹⁰³

4.36. In its submission, Conservation Council ACT Region commented that:

...even if a tree species is a pest, it will still be contributing to the overall canopy coverage and the associated benefits that brings. It is questioned how the loss of pest plant canopy cover will be offset under the Bill, and whether or not pest species will trigger the replacement tree provisions as per when a regulated tree is removed.¹⁰⁴

Recommendation 7

The Committee recommends that the ACT Government consider suitable replacements for pest trees that are removed.

Canopy targets

4.37. Several submissions expressed concern over the canopy coverage target and how it would be achieved and measured.¹⁰⁵

4.38. In its submission, Forestry Australia, ACT & Region expressed the view that the target of 30 percent city-wide canopy coverage target is ‘unambitious’, with many other jurisdictions in Australia having higher established targets and many long-established areas of Canberra already exceeding this target.¹⁰⁶

4.39. Professor Kanowski, Co-Chair of Forestry Australia, ACT & Region remarked:

One place to start is to not lose the canopy in the suburbs that have good canopy cover. We have a dozen or so suburbs with more than 30 per cent canopy cover at the moment. We want to hang onto that. That is one dimension of this bill; we want to make sure there is not a perverse outcome by allowing a significant loss of canopy in those suburbs where we already have good canopy. There is the challenge in those suburbs, there is the middle range and then we have the more recent suburbs where it is hard for a parrot to find a tree.¹⁰⁷

¹⁰³ KBRG, *Submission 3*, p 7.

¹⁰⁴ Conservation Council ACT Region, *Submission 13*, p 13.

¹⁰⁵ See, for example: KBRG, *Submission 3*, pp 5–6; ISCCC, *Submission 8*, p 4; Forestry Australia, ACT & Region, *Submission 11*, pp 1–2; ACT Urban Woodland Rescue, *Submission 12*, pp 1–2; Name withheld, *Submission 15*, p 1.

¹⁰⁶ Forestry Australia, ACT & Region, *Submission 11*, pp 1, 3.

¹⁰⁷ Professor Peter Kanowski, Co-Chair, Forestry Australia, ACT & Region, *Committee Hansard*, 6 October 2022, p 4.

- 4.40. In its submission, ISCCC expressed concern that by having only a city-wide target, there is a risk that the canopy coverage in those suburbs currently exceeding 30 percent canopy coverage may be reduced.¹⁰⁸
- 4.41. Several submissions supported setting regional or district canopy targets in addition to the city-wide target,¹⁰⁹ with Conservation Council ACT Region remarking:

We probably need to think about looking at some regional targets, and we need to look at some regional strategies – implementation plans that are more regionally focused. The inner-north and the inner south will have very different challenges over the next 20 years to, say, Woden or Gungahlin or even Molonglo Valley.¹¹⁰

Committee Comment

- 4.42. The Committee is of the view that, given the variations in canopy coverage across various suburbs, it is important that the Bill does not lead to perverse outcomes whereby existing suburbs with high levels of canopy coverage see a reduction due to a city-wide focus. The Committee recommends that the ACT Government consider whether the policy associated with canopy targets addresses the distribution of canopy and maintenance of the canopy where it already meets or exceeds the 30 percent target.

Recommendation 8

The Committee recommends that the ACT Government consider whether the policy which covers canopy targets addresses how a good spatial distribution of canopy can be achieved, and where suburbs already have a 30 percent canopy, how that canopy can be maintained.

Transparency, public notification and enforcement of decisions

- 4.43. In its submission, KBRG expressed concern about the transparency and public notification of decisions:

Under this Bill most of the applications, decisions and notifications specified in the legislation are only provided to the applicant and the decision maker and in some cases to referred authorities.¹¹¹

- 4.44. The KBRG submission cited an example where an aging and deteriorating tree was replaced by a green wall, and adjacent lessees and nearby residents were unable to find out what

¹⁰⁸ ISCCC, *Submission 8*, p 3.

¹⁰⁹ See, for example: Forestry Australia, ACT & Region, *Submission 11*, p 2; Ms Helen Oakey, Executive Director Conservation Council ACT Region, *Committee Hansard*, 6 October 2022, p 10; KBRG, *Submission 3*, p 5; ISCCC, *Submission 8*, p 4.

¹¹⁰ Ms Helen Oakey, Executive Director, Conservation Council ACT Region, *Committee Hansard*, 6 October 2022, p 10.

¹¹¹ KBRG, *Submission 3*, p 5.

was happening in the decision-making process. They note that in other jurisdictions, such decisions are made publicly available on a website.¹¹²

- 4.45. In its submission, ISCCC remarked that development applications are notified on the Transport Canberra and City Services Directorate (TCCS) website, and suggested that applications, decisions and notifications for tree decisions should be similarly published.¹¹³
- 4.46. ISCCC further suggested that penalties for offences under the Bill were unlikely to provide sufficient deterrent:

The penalties applied to offences are unlikely to deter some developers especially for properties where the profits will greatly exceed the penalties. Penalties should be at a higher scale for developers to create more effective deterrents. There should also be adequate penalties and enforcement action to address other tree damaging actions such as parking under protected trees on verges and compacting their root zones.¹¹⁴

Recommendation 9

The Committee recommends that the Bill be amended to specify that applications, notifications and decisions on tree damaging activity be published on the Transport Canberra and City Services website.

Administrative burden and processing of applications

- 4.47. Several submissions expressed concern that tree protection requirements under the Bill would cause delays to processing development applications and add costs and administrative burdens.¹¹⁵
- 4.48. Mr Greg Weller, Executive Director ACT and Southern NSW, HIA, remarked:
- ... in 2019 when this discussion started, the rhetoric from the minister at the time was around a fairer, more streamlined process. That is what we would like to get out of that, and I am not sure the bill that we have ended up with has delivered those initial intents ... Rather, in the bill, the focus is on how much red tape and cost we can add onto that.¹¹⁶
- 4.49. Property Council of Australia (ACT Division) concurred, noting that delays in approving development applications could be a deterrent to investment in the ACT:

¹¹² KBRG, *Submission 3*, p 5.

¹¹³ ISCCC, *Submission 8*, p 4.

¹¹⁴ ISCCC, *Submission 8*, p 5.

¹¹⁵ See, for example: MBA, *Submission 5*, p 2; ISCCC, *Submission 8*, p 5; HIA, *Submission 9*, pp 5–8; Property Council of Australia (ACT Division), *Submission 10*, p 2.

¹¹⁶ Mr Greg Weller, Director, ACT and Southern NSW, Housing Industry Association Limited, *Committee Hansard*, 6 October 2022, p 28.

Any delay or any deterrent to these things going faster is not good and it takes the ACT out of people's sights, and that is a concern we have about the capital flow as well.¹¹⁷

- 4.50. MBA predicted a 'spike' in the number of tree removal applications, indicating that during an information session they had been told that the number of applications generated could increase by more than 100 percent, and expressed concern that resources to manage this had not been allocated, nor any education provided to the industry on how to manage the application process.¹¹⁸
- 4.51. Conservation Council ACT Region also noted that administration of the Bill would require 'some investment of staff resources, expertise and time to make it happen properly; otherwise people will be frustrated'.¹¹⁹
- 4.52. In its submission, the ISCCC agreed, noting:
- ... it's difficult already to obtain speedy action on tree protection matters with the current system. Are we likely to see a commitment to more resources to administer the new system proposed by the Urban Forest Bill ... ? Unless there is a clear and well-resourced administrative framework for the new system, it will be very difficult to achieve the desired outcomes.¹²⁰

Committee Comment

- 4.53. The Committee is of the view that for the Bill to be effective in achieving its desired outcomes, an efficient and well-resourced applications system is necessary. The Committee recommends that the ACT Government provide as soon as possible the estimated additional resources required.

Recommendation 10

The Committee recommends that the ACT Government provide additional FTE resources for applications, processing, compliance and enforcement so that the Tree Protection Unit in TCCS, the statutory planning team in EPSDD, the conservator and any other areas involved can process applications quickly, conduct inspections and enforce breaches of the legislation.

- 4.54. In its submission, KBRG supported the inclusion of greater clarity regarding the circumstances in which trees may be removed when they are posing a danger to people or property and noted the importance for residents of approval for such removal being granted within a reasonable time.¹²¹

¹¹⁷ Dr Adele Lausberg, Acting ACT Executive Director, Property Council of Australia (ACT Division), *Committee Hansard*, 6 October 2022, p 31.

¹¹⁸ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 October 2022, p 24.

¹¹⁹ Ms Helen Oakey, Executive Director, Conservation Council ACT Region, *Committee Hansard*, 6 October 2022, p 11.

¹²⁰ ISCCC, *Submission 8*, p 5.

¹²¹ KBRG, *Submission 3*, p 4.

- 4.55. Likewise, in its submission, ISCCC called for approval for tree work to be granted within a reasonable time when evidence is presented that a tree is threatening lives or property.¹²²

Recommendation 11

The Committee recommends that the Bill be amended to specify in clause 32 that decisions on applications for approval in urgent circumstances should be notified to the applicant as soon as practicable after receipt of the application.

Understanding of the canopy contribution framework

- 4.56. Several submitters were concerned that the canopy contribution framework would not meet the objectives of the Bill.¹²³

- 4.57. The ISCCC commented that, for the Bill to be effective in meeting its objectives:

... it needs to be easily understood by those who have to comply with it, easy to administer and enforce, and to have a good balance between “carrot” and “stick” approaches. The ISCCC is not sure that the Urban Forest Bill has this balance right yet...¹²⁴

- 4.58. Ms Helen Oakey of Conservation Council ACT Region expressed concern that levies set in canopy contribution agreements may be too small to disincentivise tree removal:

We need that sweet spot to be right in terms of disincentivising removal, and being creative about how we develop blocks to maintain trees. That is probably one of the biggest challenges with it, both from a developer perspective and from an individual perspective. We do not particularly think that those amounts are high enough to stop that happening, especially with the big development blocks, where the profits are significant.¹²⁵

- 4.59. Ms Nichelle Jackson of Property Council of Australia (ACT Division) questioned whether the canopy contribution framework would be equitably applied across different zones, describing the framework as a ‘blunt instrument’ when considering different canopy coverage on different sites:

I also note that some zones ... have rates of contribution that are a little bit out of step: for instance, \$2,000 per tree as a contribution in the community facility zone versus \$6,420 in the RZ1 zone.

Whilst these numbers may appear small from an equity perspective ... the haphazard and perhaps unplanned planting of trees across sites in those zones, where those sites are being reconsidered for development may then prejudice

¹²² ISCCC, *Submission 8*, p 4.

¹²³ See, for example: KBRG, *Submission 3*, pp 6–7; ISCCC, *Submission 8*, p 4; Forestry Australia, ACT & Region, *Submission 11*, p 4; ACT Urban Woodland Rescue, *Submission 12*, p 7.

¹²⁴ ISCCC, *Submission 8*, p 5.

¹²⁵ Ms Helen Oakey, Executive Director, Conservation Council ACT Region, *Committee Hansard*, 6 October 2022, p 12.

whatever the design outcome might be considered on those sites because of the differences in those tree contribution rates, and it might be a disincentive for certain development outcomes on the sites.¹²⁶

- 4.60. The Committee is of the view that, given the varying views around the impact of the scale of the contributions to the Canopy Contribution Fund, the ACT Government should review the scale of contributions to the fund two years after commencement to determine whether fees are set at a level that achieves the policy objectives.

Recommendation 12

The Committee recommends that the ACT Government review the scale of contributions to the Canopy Contribution Fund two years after commencement to determine whether fees are set at a level that achieves the policy objectives.

- 4.61. The Committee also notes the concerns raised by the building and construction industry in evidence and at the public hearing and is of the view that the ACT Government should provide a briefing to the industry to aid in understanding of the Bill and its requirements, and that the ACT Government should continue to work closely with the industry during implementation of the Act.

Recommendation 13

The Committee notes the concern that the building and construction industry has with this Bill and recommends that the ACT Government provide a briefing to the industry so that the sector can better understand the requirements of the Bill.

Recommendation 14

The Committee recommends the ACT Government continue to work closely with key stakeholders in the building industry and in the community during the implementation of the Act.

- 4.62. In its submission, KBRG remarked that the Bill was unclear as to whether canopy contribution agreements entered by a lessee would bind any future lessee of the site if the property were sold, and whether the obligations of tree bonds concerning a property would be passed to new owners if the property were sold.¹²⁷
- 4.63. KBRG also expressed concern about replanting requirements, noting 'A resident who has already planted numerous trees may not have any space for two additional trees of equivalent eventual size of the original tree'.¹²⁸
- 4.64. Similarly, in its submission, ISCCC commented that:

¹²⁶ Ms Nichelle Jackson, Director, Canberra Town Planning, Property Council of Australia (ACT Division), *Committee Hansard*, 6 October 2022, p 31.

¹²⁷ KBRG, *Submission 3*, pp 6–7.

¹²⁸ KBRG, *Submission 3*, p 7.

Perverse outcomes could arise if residents seek to replant trees in order to avoid costs but where locations are unsuitable e.g., shading of solar panels.¹²⁹

- 4.65. Mr Joshua Hammer of HIA expressed concern that developers would not be given a choice of whether to replant trees on a site or to pay a canopy contribution:

One example that we have been unable to find an explanation for is that the bill gives the conservator the power to offer a canopy contribution agreement but they do not actually have to offer the choice between either replacing the trees or paying the canopy contribution.¹³⁰

- 4.66. The conservator's QTON response addressed these concerns, noting that:

The nature of each canopy contribution (i.e., an on-site canopy contribution, a financial settlement or a combination of both) will be determined on an individual application basis that takes into account the space availability and suitability to tree planting... In practice, as part of tree removal applications, applicants will be asked to indicate how many trees they estimate could be replanted on site. This estimate will be confirmed at the time of the application assessment site visit by tree protection officers who will inspect the available space in consideration of the proximity of other trees, structures and services. The Conservator will have the authority to negotiate with applicants about possible onsite replacements versus financial contributions.¹³¹

Committee comment

- 4.67. The Committee is of the view that it was clear from the public hearings that some the provisions of the Bill relating to canopy contribution agreements are complex and some people found the Bill difficult to understand.

Recommendation 15

The Committee recommends that the Bill be amended to make clear the criteria by which the decision-maker will determine the conditions of a canopy contribution agreement under subclause 36(2).

- 4.68. The Committee notes the concern expressed by the building and construction industry in their submissions and during the public hearing. The Committee recommends that the ACT Government provide a briefing to the industry so that the sector can better understand the requirements of the Bill.

¹²⁹ ISCCC, *Submission 8*, p 4.

¹³⁰ Mr Joshua Hammer, Workplace Advisor, Housing Industry Association Limited, *Committee Hansard*, 6 October 2022, p 32.

¹³¹ Mr Bren Burkevics, Conservator of Flora and Fauna, *answer to QTON: Interpretation of conservator's powers under Urban Forest Bill*, 6 October 2022, (received 12 October 2022), pp 2–3.

The Committee also considers that, given several aspects of the Bill are new, the EPSDD should work closely with key stakeholders in the building industry and community to ensure it is successfully implemented.

Recommendation 16

The Committee recommends that the ACT Government increase awareness and educate the ACT community on canopy contribution agreements and their administration.

5. Conclusion

- 5.1. The Committee considers that, given the interaction between this Bill and the Planning Bill 2022, and the significance of both Bills to Canberra's planning framework, it was important to conduct this inquiry.

Recommendation 17

The Committee recommends that, after considering and responding to the recommendations in this report, the Assembly pass the Urban Forest Bill 2022.

- 5.2. The Committee wishes to extend its appreciation to all those who have participated in this inquiry into the Urban Forest Bill 2022.



Ms Jo Clay MLA

Chair

17 November 2022

Appendix A: Submissions

No.	Submission by	Received	Published
1	Office of the Commissioner for Sustainability and the Environment	22/08/22	15/09/22
2	Rod Pitcher	23/08/22	15/09/22
3	Kingston and Barton Residents Group	25/08/22	15/09/22
4	ACT Government	31/08/22	15/09/22
5	Master Builders Association of the ACT	01/09/22	15/09/22
6	Mr Jochen Zeil	02/09/22	15/09/22
6.1	Mr Jochen Zeil	10/10/22	28/10/22
7	Name withheld	02/09/22	15/09/22
8	Inner South Canberra Community Council	02/09/22	15/09/22
9	Housing Industry Association Ltd	02/09/22	15/09/22
10	Property Council of Australia (ACT Division)	23/09/22	06/10/22
11	Forestry Australia, ACT & Region	23/09/22	06/10/22
12	ACT Urban Woodland Rescue	23/09/22	06/10/22
12.1	ACT Urban Woodland Rescue	14/10/22	28/10/22
13	Conservation Council ACT Region	23/09/22	06/10/22
14	Australian Institute of Landscape Architects (ACT Chapter)	24/09/22	06/10/22
15	Name withheld	28/09/22	06/10/22
16	Master Builders Association of the ACT and Property Council of Australia (ACT Division)	24/10/22	28/10/22

Appendix B: Witnesses

Thursday, 6 October 2022

Forestry Australia, ACT & Region

- Professor Peter Kanowski, Co-Chair

Conservation Council ACT Region

- Ms Helen Oakey, Executive Director

Kingston and Barton Residents Group

- Mr Richard Johnston, President

Inner South Canberra Community Council

- Ms Marea Fatseas, Chairperson

Individual

- Mr Jochen Zeil

Master Builders Association of the ACT

- Mr Michael Hopkins, Chief Executive Officer

Housing Industry Association Limited

- Mr Greg Weller, Director, ACT and Southern NSW
- Mr Joshua Hammer, Workplace Advisor

Property Council of Australia (ACT Division)

- Dr Adele Lausberg, Acting ACT Executive Director
- Ms Nichelle Jackson, Director, Canberra Town Planning
- Mr Alastair MacCallum

ACT Government

- Mr Chris Steel MLA, Minister for Transport and City Services
- Mr Jim Corrigan, Deputy Director-General, City Services, TCCS
- Ms Kirra Cox, Acting Executive Branch Manager, Strategic Policy and Programs, Transport Canberra and Business Services, TCCS
- Mr Daniel Iglesias, Executive Branch Manager, City Presentation, City Services, TCCS
- Mr Bren Burkevics, Conservator of Flora and Fauna, Executive Group Manager, Environment, Heritage and Water, EPSDD

Appendix C: Question Taken on Notice

Question Taken on Notice

No.	Date	Asked of	Subject	Response received
1	06/06/2022	Conservator of Flora and Fauna	Interpretation of conservator's powers under Urban Forest Bill	13/06/22