

**CLASSIFICATION AS A TECHNIQUE OF
JURISDICTION:
CATEGORIES OF TREE PROTECTION IN NEW
SOUTH WALES' LEGAL HISTORY**

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CERTIFICATE OF ORIGINAL AUTHORSHIP

I, Rachel Bolton, declare that this thesis is submitted in fulfilment of the requirements for the award of Doctor of Philosophy in the Faculty of Law at the University of Technology Sydney.

This thesis is wholly my own work unless otherwise referenced or acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

This document has not been submitted for qualifications at any other academic institution.

This research is supported by the Australian Government Research Training Program.

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ABSTRACT

The central concern of this thesis is to investigate classification as a technique of jurisdiction. It explores how law's classification practices draw entities (persons, objects, places and events) within the domain of law's authority, thereby establishing relations of belonging to law. These broad concerns are examined in the context of the common law, specifically the history and current practices of tree protection laws in New South Wales ('NSW'). The research is guided by the following question: how does law classify protected trees? To answer this question, the thesis works through and extends the resources offered by the jurisprudence of jurisdiction, an area of jurisprudence concerned with how lawful relations are established and maintained as a matter of technique and practice. Drawing on archival and other historical sources, the thesis traces how different institutions have classified law's protected trees in NSW since 1787. The findings are presented across three registers: who, how and effects. As a preliminary matter, sources of authority to classify law's protected trees are discussed. The first register, *who*, then offers an account of the land-granting practices of the early NSW governors, who first exercised the authority to classify law's protected trees in the colony. The second register, *how*, considers techniques of classification. It explores how the NSW governors exercise the authority to make law's categories by writing. This register also considers how the NSW courts sort trees into law's categories by naming. The third register, *effects*, contemplates how different categories of tree protection offer different qualities of belonging to law, bringing trees to law in different forms. Overall, the thesis contributes to the jurisprudence of jurisdiction and to the history of tree protection laws in NSW. Both contributions – to jurisprudence and to trees – support the overall argument that such a jurisprudence of classification offers important insights into how entities come to belong to law and the quality of that belonging.