



Land and Environment Court

of New South Wales

Tree disputes: understanding the law

The *Trees (Disputes Between Neighbours) Act 2006* (the **Trees Act**) operates for applications made to the Land and Environment Court under:

- Part 2 (damage to property and injury to persons) after 2 February 2007, and
- Part 2A (high hedges) after 2 August 2010.

This document may help you understand:

- how the Trees Act works
- what the Land and Environment Court must consider when considering an application
- the orders that the court can make.

You can obtain a copy of the Trees Act via this link: [Trees \(Disputes Between Neighbours\) Act 2006](#).

Although this document may assist you, it is not legal advice.

What are the purposes of the Trees Act?

The Trees Act aims to provide a simple, inexpensive and accessible process for resolving neighbour disputes about trees.

Following a review of the original legislation, from 2 August 2010, the Trees Act contains two operative Parts. The first is Part 2 and is the original legislative framework dealing with damage to property or likelihood of injury to persons. The new Part (Part 2A), operating from 2 August 2010, deals with high hedges that severely obstruct sunlight to a window of a dwelling or a view from a dwelling.

Part 2

This Part enables people who consider that their neighbour's tree has caused, is causing, or is likely in the near future to cause damage to their property or is likely to cause injury to any person, to make an application to the Land and Environment Court to make orders.

The court may make orders to remedy, restrain or prevent damage to property or to prevent injury to any person when damage or injury arises from a tree that is situated on adjoining land. The Trees Act also permits the court to order compensation for or rectification of damage to the applicant's property caused by a tree.

Part 2A

This Part enables people who consider that their neighbour's hedge (which comprises two or more trees) severely obstructs sunlight to a window of their dwelling or a view from

their dwelling, to make an application to the Land and Environment Court to make orders. Part 2A does not apply to single trees obstructing sunlight to a window of their dwelling or a view from their dwelling.

The court may make orders to remedy, restrain or prevent the severe obstruction of:

- (a) sunlight to a window of a dwelling situated on the applicant's land, or
- (b) any view from a dwelling situated on the applicant's land,

if the obstruction occurs as a consequence of trees comprising the hedge that are the subject of the application.

To what trees does the Trees Act apply?

The Trees Act applies to trees that are on privately owned land in a 'residential' zone or in zones called 'village', 'township', 'industrial' or 'business' or zones which are of the same type as such a zone but may be called a different name.

Part 2 of the Trees Act also applies to 'rural-residential' zones but Part 2A (dealing with high hedges) does not apply to 'rural-residential' zones.

Part 2 of the Trees Act also applies to trees on Crown land (for example, schools, public housing and hospitals). The Trees Act does place some restrictions on the court dealing with trees on Crown land and these can be seen in [s 11](#) of the Trees Act. However, Part 2A of the Trees Act does not apply to Crown Land.

The Trees Act defines a tree as including any woody perennial plant, any plant resembling a tree in form and size, and any other plant prescribed by the regulations. This includes shrubs. Regulations have been made declaring bamboo and vines to be trees for the purposes of the Trees Act.

Part 2A only applies to groups of 2 or more trees that are planted to form a hedge and that have reached a height of at least 2.5 m. It does not apply to single trees.

The trees must also be situated wholly or principally on land that adjoins your land. That is, the tree must be completely or mostly on your neighbour's land.

If a tree has caused damage or injury but has since been wholly removed, an application can be made under Part 2 for orders to remedy damage to your property or for the payment of compensation for damage to the your property.

If there is a dispute about whether the Trees Act applies to a particular tree, this will be determined by the court when dealing with your application. If there is any uncertainty about the position of the tree on a boundary and, therefore, whether the Trees Act applies, you may be directed to obtain a survey plan showing the location of the tree and of the boundary between the properties.

The Trees Act does not apply to trees on land owned or managed by a local council.

How can I find out if the Trees Act applies?

If you want to make an application and you are unsure of the zoning of the land where the tree is situated or whether the tree is on public land, you should contact your local council.

You can find out what is the local council for a suburb or town through a search on the Department of Local Government's website at www.dlg.nsw.gov.au

Your local council can also provide you with the Lot and Deposited Plan numbers you will need to complete an application.

Who can make an application?

You can make an application only if you are the owner or occupier of the land that adjoins the land on which the tree is growing.

How do I make an application to the court in a tree dispute?

This information sheet does not contain information about the process of making an application. Our [website](#) explains in detail the process of making an application to resolve a tree dispute in the NSW Land and Environment Court.

Do I have to negotiate with my neighbour before I go to court?

The Court cannot make an order unless it is satisfied that you have made a reasonable effort to resolve this matter with the owner of the land on which the tree or hedge is situated.

You should try to resolve the dispute before applying to the Court but you must try to do so before the final hearing.

Urgent applications based on likely injury to persons

The court has the power to deal with matters quickly if there is a special reason. An example of a matter which may need to be dealt with expeditiously is an application based on likelihood of injury to persons.

If you think there is some urgent reason for your application to be dealt with quickly, you should set out the reasons in a letter with your application.

All applications based on likelihood of injury to persons will automatically be considered by the court for a shorter period of time for the preliminary hearing and for the final hearing.

What matters must the court consider?

Applications concerning damage to property or injury to persons (including applications for compensation for damage or for rectification orders)

You will have to satisfy the court that you have made a reasonable effort to reach agreement with the owner and occupier of the land on which the tree is situated and that notice of the application has been given (see s 10(1) of the Trees Act).

You will also have to satisfy the court that the tree concerned has caused, is causing, or is likely in the near future to cause, damage to your property or that the tree is likely to cause injury to a person. Please note that in many tree cases heard to date, the court has

applied a Tree Dispute principle (see *Yang v Scerri* [2007] NSWLEC 592) that considers the appropriate timeframe for 'the near future' is 12 months.

The court cannot make an order under s 9 of the Trees Act unless the court is satisfied of these matters.

It is very important that you answer all of the relevant questions in the application form and that you attach any necessary supporting photographs or documents. The questions in the application form cover the matters in the Trees Act listed below.

Before making a decision on an application, the court must consider the following matters in s 12 of the Trees Act:

- (a) the location of the tree concerned in relation to the boundary of the land on which the tree is situated and any premises,
- (b) whether interference with the tree would, in the absence of section 6 (3), require any consent or other authorisation under the [Environmental Planning and Assessment Act 1979](#) or the [Heritage Act 1977](#) and, if so, whether any such consent or authorisation has been obtained,
- (b1) whether interference with the trees would, in the absence of section 25 (t) (Legislative exclusions) of the [Native Vegetation Act 2003](#), require approval under that Act,
- (b2) the impact any pruning (including the maintenance of the tree at a certain height, width or shape) would have on the tree,
- (b3) any contribution of the tree to privacy, landscaping, garden design, heritage values or protection from the sun, wind, noise, smells or smoke or the amenity of the land on which it is situated,
- (c) whether the tree has any historical, cultural, social or scientific value,
- (d) any contribution of the tree to the local ecosystem and biodiversity,
- (e) any contribution of the tree to the natural landscape and scenic value of the land on which it is situated or the locality concerned,
- (f) the intrinsic value of the tree to public amenity,
- (g) any impact of the tree on soil stability, the water table or other natural features of the land or locality concerned,
- (h) if the applicant alleges that the tree concerned has caused, is causing, or is likely in the near future to cause, damage to the applicant's property:
 - (i) anything, other than the tree, that has contributed, or is contributing, to any such damage or likelihood of damage, including any act or omission by the applicant and the impact of any trees owned by the applicant, and
 - (ii) any steps taken by the applicant or the owner of the land on which the tree is situated to prevent or rectify any such damage,
- (i) if the applicant alleges that the tree concerned is likely to cause injury to any person:
 - (i) anything, other than the tree, that has contributed, or is contributing, to any such likelihood, including any act or omission by the applicant and the impact of any trees owned by the applicant, and

- (ii) any steps taken by the applicant or the owner of the land on which the tree is situated to prevent any such injury,
- (j) such other matters as the court considers relevant in the circumstances of the case.

Although the court's processes in tree disputes are largely informal, these are still civil proceedings in a court. As a consequence, the onus of proof rests with the applicant to prove the facts necessary for the court to make the orders sought. The test is on the balance of probabilities.

Applications concerning hedges that severely obstruct sunlight or views

You will have to satisfy the court that you have made a reasonable effort to reach agreement with the owner and occupier of the land on which the hedge is situated and that notice of the application has been given (see s 14E(1) of the Trees Act).

You will also have to satisfy the court that the trees were planted and were not self-sown and that they are 2.5 metres or greater in height. Section 14A(1) of the Trees Act provides:

This Part applies only to groups of 2 or more trees that:

- (a) are planted (whether in the ground or otherwise) so as to form a hedge, and
- (b) rise to a height of at least 2.5 metres (above existing ground level).

You will also have to satisfy the court that:

- a. any or all of the trees concerned are severely obstructing sunlight to a window of a dwelling on your land and or are severely obstructing a view from a dwelling on your land; and
- b. the severity and nature of the obstruction is such that your interest in having the obstruction removed, remedied or restrained outweighs any other matters that suggest the undesirability of disturbing or interfering with the trees by making an order (see s 14E(2) of the Trees Act).

Section 3 of the Trees Act defines window as:

window includes a glass sliding door, a door with a window, a skylight and any other similar thing.

The court cannot make an order under s 14D of the Trees Act unless the court is satisfied of these matters.

It is very important that you answer all of the relevant questions in the application form and that you attach any necessary supporting photographs or documents. The questions in the application form cover the matters listed below.

In these applications, the court must consider the following matters listed in s 14F of the Trees Act:

- (a) the location of the trees concerned in relation to the boundary of the land on which the trees are situated and the dwelling the subject of the application,
- (b) whether the trees existed prior to the dwelling the subject of the application (or the window or part of the dwelling concerned where the dwelling has been altered or added to),
- (c) whether the trees grew to a height of 2.5 m or more during the period that the applicant has owned (or occupied) the relevant land,
- (d) whether interference with the trees would, in the absence of section 6 (3), require any consent or other authorisation under the Environmental Planning and Assessment Act 1979 or the Heritage Act 1977 and, if so, whether any such consent or authorisation has been obtained,
- (e) any other relevant development consent requirements or conditions relating to the applicant's land or the land on which the trees are situated,
- (f) whether the trees have any historical, cultural, social or scientific value,
- (g) any contribution of the trees to the local ecosystem and biodiversity,
- (h) any contribution of the trees to the natural landscape and scenic value of the land on which it is situated or the locality concerned,
- (i) the intrinsic value of the trees to public amenity,
- (j) any impact of the trees on soil stability, the water table or other natural features of the land or locality concerned,
- (k) the impact any pruning (including the maintenance of the tree at a certain height, width or shape) would have on the trees,
- (l) any contribution of the trees to privacy, landscaping, garden design, heritage value or protection from the sun, wind, noise, smells or smoke or the amenity of the land on which it is situated,
- (m) anything, other than the trees, that has contributed, or is contributing, to the obstruction,
- (n) any steps taken by the applicant or the owner of the land on which the trees are situated to prevent or rectify the obstruction,
- (o) the amount, and number of hours per day, of any sunlight that is lost as a result of the obstruction throughout the year and the time of the year during which the sunlight is lost,
- (p) whether the trees lose their leaves during certain times of the year and the portion of the year that the trees have less or no leaves,
- (q) the nature and extent of any view affected by the obstruction and the nature and extent of any remaining view,
- (r) the part of the dwelling the subject of the application from which a view is obstructed or to which sunlight is obstructed,
- (s) such other matters as the court considers relevant in the circumstances of the case.

Again, the onus of proof rests with the applicant to prove the facts necessary for the court to make the orders sought. The test is on the balance of probabilities.

What orders can the court make?

For applications concerning damage to property or injury to persons

The court has broad power to make whatever orders it thinks are needed to remedy, restrain or prevent damage to property or to prevent injury to any person where the court is satisfied that the tree concerned has been, is or is likely in the near future to be the cause (see s 9(1) of the Trees Act).

Section 9(2) of the Trees Act gives specific examples of orders the court may make. The court may:

- (a) require the taking of specified action to remedy damage to property, or
- (b) require the taking of specified action to restrain or prevent damage or, if damage has already occurred, further damage, to property, or
- (c) require the taking of specified action to prevent injury to any person, or
- (d) require the making of an application to obtain any consent or other authorisation referred to in section 6 (1) (a)#, or
- (e) authorise the applicant concerned to take specified action to remedy, restrain or prevent damage or (if damage has already occurred) further damage to property, or
- (f) authorise the applicant concerned to take specified action to prevent injury to any person, or
- (g) authorise land to be entered for the purposes of carrying out an order under this section (including for the purposes of obtaining quotations for the carrying out of work on the land), or
- (h) require the payment of costs associated with carrying out an order under this section, or
- (i) require the payment of compensation for damage to property, or
- (j) require the replacement of a tree that the court orders to be removed and for the new tree to be maintained to a mature growth.

If some other law requires you to get permission before anything can be done to the tree about which you are applying, section 6(1)(a) of the Trees Act requires that this permission must be obtained before anything can be done to the tree. This does not apply to permission from a local council under the Environmental Planning and Assessment Act 1979 (for example, under a tree preservation order) or to permission from the Heritage Council under the Heritage Act 1977.

For applications concerning hedges obstructing sunlight or views

The court has broad power to make whatever orders it thinks are needed to remedy, restrain or prevent the severe obstruction of sunlight to a window of a dwelling situated on the applicant's land or any view from a dwelling situated on the applicant's land, if the obstruction occurs as a consequence of trees that are the subject of the application concerned (see s 14D(1) of the Trees Act).

Section 14D(2) of the Trees Act gives specific examples of orders the court may make with respect to hedges. The court may:

- (a) require the taking of specified action to remedy the obstruction of sunlight or of a view,
- (b) require the taking of specified action to restrain or prevent the obstruction of sunlight or of a view,
- (c) require the taking of specified action to maintain a tree or trees at a certain height, width or shape,
- (d) require the removal of a tree or trees and the replacement of the tree or trees with a different species of tree,
- (e) require the making of an application to obtain any consent or other authorisation referred to in section 6 (1) (a)#, or
- (f) authorise the applicant concerned to take specified action to remedy, restrain or prevent the obstruction of sunlight or of a view,
- (g) authorise land to be entered for the purposes of carrying out an order under this section (including for the purposes of obtaining quotations for the carrying out of work on the land),
- (h) require the payment of costs associated with carrying out an order under this section.

If some other law requires you to get permission before anything can be done to the tree about which you are applying, section 6(1)(a) of the Trees Act requires that this permission must be obtained before anything can be done to the tree. This does not apply to permission from a local council under the Environmental Planning and Assessment Act 1979 (for example, under a tree preservation order) or to permission from the Heritage Council under the Heritage Act 1977.

The court has no power under this section to order the payment of compensation for obstruction of sunlight or of a view.

What if the tree has damaged a dividing fence?

If the tree has damaged a fence on the boundary between your property and the property where the tree is wholly or principally situated and you are seeking an order for rectification of the damage to the fence caused by the tree, you can also seek a further order pursuant to s 13A of the Dividing Fences Act 1991 concerning any portion of the fence that has not been damaged by the tree but that might also require replacement. You should specify any such order in your application.

What if circumstances change?

If the circumstances concerning the tree change, such as the tree becomes unsafe by reason of a storm or fire, you can make another application concerning the same tree. The court will determine your new application on the basis of the new circumstances.