

• Trees (Disputes Between Neighbours) Act 2006

○ The *Trees (Disputes Between Neighbours) Act 2006* operates for applications made to the Land and Environment Court (www.lawlink.nsw.gov.au/lec) under Part 2 (damage to property and injury to persons) after 2 February 2007 and for applications under Part 2A (high hedges) after 2 August 2010.

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○ Notes about the Trees Act

These notes are provided to explain:

- How the Trees Act works;
- What the Land and Environment Court can do;
- How to make an application;
- How the application will be dealt with; and
- What happens if the Court makes any order.

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

These notes will also assist you in completing an application. These notes are 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?

You must make an application in writing. You must fill in an application form and one or both of the claim forms. These forms are:

- Tree Dispute Application Form
- Tree Dispute Claim Details (damage to property or injury to a person)
- Tree Dispute Claim Details (high hedges)

[Copies of these forms can be accessed on the Court's website via this link.](#)

Application forms are also available at the Court at Level 4, 225 Macquarie Street (Windeyer Chambers), Sydney. They are also available at Local Courts in New South Wales. You can obtain details of locations of Local Courts from this link: [Local Courts](#).

Applications can be lodged at the Court at Level 4, 225 Macquarie Street (Windeyer Chambers), Sydney or GPO Box 3565 Sydney 2001 or at any Local Court in New South Wales.

You should carefully consider what forms you need to submit, as you will need the Court's permission to change the application when the hearing is held and permission might not be granted.

How many copies of the form and any attachments do I have to provide?

When lodging your application you must provide copies for each of the parties (including a copy for the local council). A copy will be needed for the Heritage Council if the tree is heritage listed. The table below will enable you to work out how many copies of the application and supporting documents you must provide:

The owner or occupiers of the land on which the tree is situated

It is very important that the full names of all of the owners and occupiers of the land on which the tree is situated are shown on the application form. All owners and occupiers must be given a copy of the application. In the case of the owners living at the same address, one copy is sufficient. However, if one or more of the owners reside elsewhere, a copy of the application must be served on them.

What information do I need to provide?

You will need to fill in the application form and **answer all the questions** in the form. **You are required to specify precisely what orders you are asking the Court to make.**

If you are making an application under Part 2 of the Trees Act with respect to damage to property or injury to a person, you will need to fill in the application form and the additional specific form for damage or injury. This form also includes a section for compensation for damage caused by the tree the subject of the application or orders for rectification works.

If you are making an application under Part 2A of the Trees Act with respect to hedges obstructing sunlight or views, you must fill in the application form and the

additional specific form for hedges. Please note that the Court cannot order payment of compensation for loss of sunlight or views.

Apart from obstructing sunlight or views, if you consider that any or all of the trees in the hedge have caused, are causing or are likely in the near future to cause damage to your property or likely to cause injury to any person, you will also need to complete the necessary form for damage or injury.

In order to make the process as informal and quick as possible, you are asked to provide as much information as possible with your application – including any supporting documentation such as reports, photographs, quotations for repairs and any other relevant documents. **Copies of any supporting documents form part of your application and copies must be included as part of the documents served on the owner (and occupier if relevant), local council (and Heritage Council if required).**

How much does it cost to make an application?

The aim of the Trees Act is to deal with neighbour tree disputes justly, quickly and cheaply. **There is a fee to make an application. The fee must be paid when lodging the application.** This fee is currently (at 1 July 2010) \$205 for individuals and \$410 for corporations.

Service of the application

Service of a document is the process of making sure that any person who is required to be given a copy of an application to the Court or any other legal document is given it in a way that complies with the relevant legal rules. To help you understand this process, the Court has published ‘Service of Documents – A guide for Self-Represented Litigants’. This can be found on the Court’s website or by clicking on the following link – [Service of Documents](#).

Unless the Court orders otherwise (because of likelihood of injury – see below), you will have to give at least 21 days notice of the lodging of the application and the date for the first hearing to the **owner/s of the land** on which the tree is situated. If the owner is not the occupier, you will also need to give notice to the **occupier of the land** on which the tree is situated.

It is not sufficient to serve the managing real estate agent with the application, although, at a later stage the owner might authorise the agent to appear formally for the owner.

You will also have to give at least 21 days notice to the **local council**.

If the tree is situated on land that has an interim heritage order or is listed on the State Heritage Register, you will also have to give at least 21 days notice to the

Heritage Council. You can check whether or not this applies by contacting the [Heritage Office](#).

You also have to give at least 21 days notice to any other person you think will be affected by any order you are seeking.

In the particular circumstances of an application, the Registrar may also require that notice of an application be given to other people or that notice be given in a specified manner or within a specified period.

The Registrar may waive the requirement to give notice or vary the period of notice if the Registrar thinks it is appropriate to do so in the circumstances. Unless the notice period has been varied, the Court cannot make an order unless it is satisfied that you have given the required notice of the application.

How does the tree owner take part in the Court process?

After an applicant serves an application on the owner and occupier of the land on which the tree is situated and other persons who wish to be a party (see earlier section on service of documents), they need to acknowledge service and register their desire to take part in the hearing. This is known as filing a Notice of Appearance. This is done by completing and lodging with the Court (and providing a copy to the applicant and the local council) a Notice of Appearance. A copy of the form for a Notice of Appearance is available on the Court's website (via this link – [Notice of Appearance](#)). A copy of the form will also be provided to each person or organisation who is served with the application.

Do I have to try to negotiate before I go to the Court?

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

How does the Court deal with the application?

- **The preliminary hearing**

When the application reaches the Court, it will be given a date, time and place for a preliminary hearing. Generally, this will be the next available scheduled date for preliminary hearings after the required 21 days notice that must be given to the owner and occupier of the land on which the tree is situated and to the local council. These dates are listed on the Court's website.

Court staff will complete details for this preliminary hearing at the time the application is lodged and these will be set out on the second page of applications lodged with the Court.

The preliminary hearing will usually be heard by a Registrar either in Court in Sydney or via telephone for those outside Sydney or in the outer Sydney metropolitan area. The parties will be asked if the matter has been resolved. If it has, the applicant must formally file a Notice of Discontinuance. A copy of the form for a Notice of Discontinuance is available on the Court's website via this link – [Notice of Discontinuance](#). If the dispute has not been resolved, the Registrar will set a date and time for a final hearing.

If the parties agree to resolve the matter at the preliminary hearing, the Registrar can make consent orders implementing the agreement as long as the orders do not involve interference with the tree. If the orders do involve interference with the tree, it will still be necessary for the matter to be heard and determined by the Court.

The Registrar will also make directions in preparation for the final hearing. These will include setting a strict timetable for each party to provide the other with any further information. These directions will be provided to the parties in writing. The standard directions are found on the following link to the Court's website – [Standard directions in Tree Disputes](#).

- **The final hearing**

The final hearing will commence on site and will usually be no more than 4 to 5 weeks after the preliminary hearing.

For applications concerning **damage to property or injury to a person**, the final hearing will usually be conducted entirely at the site on which the tree is situated. Usually, the hearing is not likely to take more than 2 to 3 hours. A decision and reasons for the decision will usually be given on site at the conclusion of this hearing. The decision and reasons are recorded and a printed copy will be sent to the parties and the local council after the recording has been transcribed.

For applications concerning **hedges and severe obstruction of views or sunlight**, the hearing will commence on site (usually in the morning) and will then return to a nearby court. In Sydney, the court hearing will be at the Land and Environment Court at 225 Macquarie Street, Sydney. In regional areas, the court hearing will be in the nearest available courthouse. It is anticipated that applications regarding hedges will take one day and that the decision and the reasons for it will usually be given at the conclusion of the court hearing. The decision and reasons will be recorded and a printed copy will be sent to the parties after the recording has been transcribed.

Will there be a site inspection?

As noted above, a final hearing will commence on site. The meeting place and time will be given at the preliminary hearing. The trees will usually be inspected from both properties.

For applications regarding hedges and severe obstruction of sunlight and/or views, it will be necessary for everyone involved in the hearing to look through the windows of the parts of your house you say are affected by the hedge.

Applications based on injury to persons

The Court has the power to deal with matters on shorter than 21 days notice 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 a shorter period of time, 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.

What matters must the Court consider?

- **For 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.

•For 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:

(1) 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),

(b) 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,

(b) 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,

- (f) any contribution of the trees to the local ecosystem and biodiversity,*
- (f) any contribution of the trees 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 trees to public amenity,*
- (f) any impact of the trees on soil stability, the water table or other natural features of the land or locality concerned,*
- (f) the impact any pruning (including the maintenance of the tree at a certain height, width or shape) would have on the trees,*
- (f) 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,*
- (f) anything, other than the trees, that has contributed, or is contributing, to the obstruction,*
- (f) any steps taken by the applicant or the owner of the land on which the trees are situated to prevent or rectify the obstruction,*
- (f) 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,*
- (f) 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,*
- (f) the nature and extent of any view affected by the obstruction and the nature and extent of any remaining view,*
- (f) the part of the dwelling the subject of the application from which a view is obstructed or to which sunlight is obstructed,*
- (f) 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.

Dividing fences

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.

Who is given a copy of the Court's orders?

You and the other parties to the hearing will be given a copy of any order the Court makes.

The Court must also provide a copy of any order it makes to the council of the local government area in which the tree is situated and to the Heritage Council (if the Heritage Council appeared in the proceedings).

What if I don't agree with the Court's orders?

The applications are usually determined by a Commissioner or an Acting Commissioner with specialist knowledge in arboriculture. You cannot appeal a decision on the merits of the case but if you consider the Commissioner has made an error of law, you can appeal under s 56A of the *Land and Environment Court Act 1979* (the Court Act). An appeal under s 56A is heard by a Judge of the Court. A judicial decision following a s 56A appeal can be appealed to the Court of Appeal with leave (s 57(4)(c) of the Court Act). Again, this appeal is limited to errors of law.

When a Judge (rather than a Commissioner) determines a Trees Act application on the merits, an appeal goes to the Court of Appeal but again is limited to errors of law (s 57(1) of the Court Act).

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.

How are the Court's orders enforced?

If a person fails to comply with any requirement imposed by an order of the Court made under this Act, that person may be fined up to 1,000 penalty units (one penalty unit is currently \$110).

A local council can agree to carry out work required by an order of the Court if the owner has failed to carry out the work in accordance with the order.

The local council cannot be required to do this and can only consider doing so if the applicant for the order concerned has requested the local council to do so.

If the local council does carry out work to meet the requirements of an order of the Court, the local council can recover the reasonable costs of carrying out work from the owner of the land on which the tree is situated.

More information of enforcement of orders is available by this link to this topic on the Court's website – [link](#).