



**Land and Environment
Court**
of New South Wales

Trees (Disputes Between Neighbours) Act 2006

The Trees (Disputes Between Neighbours) Act 2006 starts operating for applications made to the Land and Environment Court (www.lawlink.nsw.gov.au/lec) after 2 February 2007.

Notes about the Act

These notes are provided to explain:

- How the 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 an order.

You can obtain a copy of the Act by 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 Act?

The purposes of the Act are to enable the Court to make orders to remedy, restrain or prevent damage to property or to prevent injury to any person when a tree that is situated on adjoining land might cause that damage or injury. The Act also permits the Court to order compensation for or rectification of damage caused by a tree.

The Act does not allow the Court to make orders solely for other purposes (such as lopping or removing trees which block views).

To what trees does the Act apply?

The Act applies to trees which are on privately owned land in a “residential” zone (but not “rural-residential” zones) 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.

The 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.*

A regulation has been made declaring bamboo to be trees for the purposes of the Act.

The Act also applies to trees on Crown land. The Act does make some restrictions on the Court dealing with trees on Crown land and these can be seen in [s 11 of the Act](#).

The Act deems a tree to be situated on land if the tree is situated wholly or principally on that land.

You can only make an application about trees situated wholly or principally on land which adjoins your land.

If there is a dispute about whether the Act applies to a particular tree, this will be determined by the Court when dealing with your application.

Other land can be included by Regulations.

The Act does not apply to trees on land owned or managed by a Council.

How can I find out if the Act applies?

If you want to make an application and you are unsure of the zoning of the land where the tree is located or whether the tree is on public land for which an application can be made, 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 web site 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 the tree is located on land where you are the owner or occupier of adjoining land.

How do I make an application?

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

- Application Form - Trees
- Supplementary Form (Trees) - Compensation Claim
- Supplementary Form (Trees) - Damage to Property
- Supplementary Form (Trees) - Risk of Injury to People

[This link accesses copies of these forms on the Court's web site.](#)

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.

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 will also need to fill in one or more of the supplementary application forms depending on what you are asking the Court to order.

How much does it cost?

The aim of the Act is to deal with neighbour tree disputes justly, quickly and cheaply. There is a fee to make an application. This fee is currently \$173 for individuals and \$346 for corporations.

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?

A member of the Court, usually a Commissioner, will hear your application.

The first hearing will be an informal conciliation conference when a Commissioner will assist the parties to try to resolve the application. This will commence in court but may be adjourned to the site.

If the parties agree on a resolution, the Commissioner can make orders implementing the agreement.

Alternatively, the parties may agree to allow the Commissioner to determine the application. The Commissioner may make the decision at this time.

If the parties are not able to agree in one of these ways at the first hearing, the Commissioner will set a final hearing date – usually about four weeks after the first hearing.

The Commissioner 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.

Where will the hearing of your application take place?

The Court will deal with tree applications on a regular basis at Local Courts at various locations in the Sydney metropolitan region, Newcastle, Wollongong, the Central Coast and regional NSW.

Tree applications will also be heard at the Land and Environment Court in Sydney.

A hearing location will be selected that is near to the site.

Will there be a site inspection?

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 documents.

If you think there is a need to visit the site, this will be dealt with at the first hearing.

Who else has to be told?

You have to give at least 21 days notice of the lodging of the application and the date for the first hearing to the **owner 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**.

The notice must include the terms of any orders you are asking the Court to make.

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

If the tree is located on land which 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 Court 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 Court may waive the requirement to give notice or vary the period of notice if it 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.

The proceedings will be informal but a record will be given to you and the other participants of the decision and orders of the Court.

Applications based on risk of injury to persons

The Court has the power to deal with matters on shorter than 21 days notice if there is special reason (an example of a matter which may need to be dealt with expeditiously is an application based on risk 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 RISK OF INJURY TO PERSONS WILL AUTOMATICALLY BE CONSIDERED BY THE COURT FOR A SHORTER PERIOD OF TIME FOR THE FIRST HEARING.

What matters must the Court consider?

You will 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.

Before making a decision on an application, the Court must consider the following matters:

- (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,*
- (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.*

What orders can the Court make?

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 is or would be the cause.

The Act also 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 Act requires that this permission must be obtained before anything can be done to the tree.

This does not apply to permission from the 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***.

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).

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

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