

FACT SHEET: NEIGHBOURHOOD DISPUTES- TREES

Applications to be made to the Land and Environment Court of NSW under the *Trees (Disputes Between Neighbours) Act 2006* (the Act).

Where a tree that is situated on adjoining land and might cause damage or injury this Act allows the Court to make orders to:

1. Remedy, restrain or prevent damage to property; and/or
2. Prevent injury to any person;
3. Order compensation for or rectification of damage;

When does the Act apply?

It applies to trees on privately owned land in a:

- Residential zone (excludes rural-residential);
- Village;
- Township;
- Industrial;
- Business;
- Other zones of similar type;
- Crown land (some restrictions see s11 of the Act).

A tree is deemed to be situated on land if the tree is wholly or principally on that land. An application can only be made if the tree is on land that **adjoins land** of which you are the owner or occupier.

*** Does NOT apply to trees on Council owned or managed land.**

How is an Application made?

The Application must be made in writing to the Land and Environment Court (LEC). Application forms are available from the LEC's web site, the LEC in Sydney and Local Courts in NSW. You must complete an Application form along with at least one of the supplementary forms:

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

and either post to or lodge at the Land and Environment Court.

You must lodge sufficient copies for each of the parties as follows.

- If the owner of the tree property is also its occupier – 3 copies;
- If the owner of the tree property is not its occupier – 4 copies;
- If the tree is heritage listed – 1 copy in addition to above.

There is an Application fee that must be paid at time of lodging the application.

Fees are currently as follows - Individuals - \$173.00 Corporations - \$346.00

* All reasonable efforts to resolve the matter with the owner of the land must be made prior to going to Court.

You MUST give at least 21 days notice of the lodging of the application and the date of the first hearing to:

- The owner of the land on which the tree is situated; and
- The occupier of the land on which the tree is situated; and
- The local council;
- The heritage Council (if applicable);
- Any other person you think may be affected by any orders you are seeking.

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

The Court may shorten the required notice period. You should set out the reasons in your letter of application if you think there is urgency to the matter, for example, there is a risk of injury.

The Court Process

The application will usually be heard by a Commissioner of the Court.

First Hearing – Informal conciliation conference to assist in resolving application by a short Court hearing at a Local Court in Sydney or by telephone for country matters. If the parties come to a resolution the Commissioner can make Consent Orders implementing the agreement.

Final Hearing – If no agreement is reached at the first hearing a final hearing date will be set within four to five weeks, with the Commissioner providing directions in writing to the parties that will include a strict timetable for providing each party with any further information. The final hearing will be informal, will take no more than 2 to 3 hours and will be held on site. A decision and reasons for the decision will usually be given to the parties on site and a printed copy of the recording will be sent to the parties at a later date. Formal written Orders of the Court will be sent to the parties, the Local Council and the Heritage Council if applicable after the Hearing.

Issues Court Must Consider

The Court must be satisfied that the tree concerned has caused, is causing, or is likely in the near future to cause, damage to your property or the tree is likely to cause injury to a person.

What Orders can the Court Make?

The Court has broad power to make whatever orders it thinks are necessary to remedy, restrain or prevent damage to property or to prevent injury to any person where it is satisfied that the tree concerned is or would be the cause, see Part 2, section 9 of the Act.

Enforcement of Court Orders

Failure to comply with any requirement imposed by an order made by the Court under this Act may result in the person being fined up to 1,000 penalty units (one penalty unit is currently \$110).

A Council can agree to carry out the work required by an order of the Court only if the owner has failed to carry out the work and the Applicant for the order has requested the Council to do so. Council can recover reasonable costs of carrying the work from the owner of the land.

LINKS

Land and Environment Court of NSW

www.lawlink.nsw.gov.au/lec

NSW Department of Local Government

www.dlg.nsw.gov.au

Heritage Office

www.heritage.nsw.gov.au

Applications available from and be lodged at:

Level 4, 225 Macquarie Street
(Windeyer Chambers)
GPO Box 3565
Sydney NSW 2000

Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.