



Tree Disputes in NSW

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Overview

This factsheet explains how the [Trees \(Disputes Between Neighbours\) Act 2006 \(NSW\)](#) (**Tree Disputes Act**) applies to tree disputes. The Tree Disputes Act applies to trees and hedges that are located on private land. It does not relate to trees on public land or disputes with public authorities about tree management.

Many concerns about trees can be dealt with between the relevant property owners/occupiers. Where this is not possible, the Tree Disputes Act seeks to provide a clear system for the resolution of certain commonplace disputes about trees and hedges. If the Tree Disputes Act applies, it is not possible to make a claim in nuisance.¹

Before agreeing to prune or remove a problematic tree, it is important to first check whether permission is required.

It is also important not to trespass onto a neighbour's property in the process of pruning or removing trees.

Read: EDO Factsheets on:

- **Clearing Trees on Urban Land and Environmental Zones** for more information on urban areas of NSW and land that is zoned for environmental purposes (known as E-zones)
- **Clearing Vegetation on Rural Land** for more information on the laws governing the clearing of vegetation in rural areas

¹ [Trees \(Disputes Between Neighbours\) Act 2006 \(NSW\)](#), s 5 (**Tree Disputes Act**).

Damage to property or threat to human life

If a tree is damaging property or is a threat to human life, the first step is to try and resolve the matter with the owner of the property on which the tree is situated.

If this fails, mediation may be an option.

As a last resort, the Land and Environment Court of NSW (**LEC**) may be able to make an order about the tree, depending on whether it meets the criteria.²

Mediation

If the issue cannot be resolved between the parties, mediation is a good option.

[Community Justice Centres \(CJCs\)](#) offer free mediation services to help people resolve disputes without having to go to court. A CJC will assess whether mediation is a viable option. They will then invite the appropriate parties to attend mediation. Mediators do not take sides, and they will not make a decision about the dispute. Mediators try to make sure each person has a chance to have their say, keep the discussion on track, and help the parties come to an agreement where possible.

Visit: [The NSW Communities & Justice page on Welcome to Community Justice Centres for more information about CJCs](#)

Land and Environment Court

As a last resort, it may be possible to resolve a tree dispute by seeking an order from the Land and Environment Court (**LEC**). The LEC may make such orders as it thinks fit to remedy, restrain or prevent damage to property, or to prevent injury to any person, as a consequence of the tree.³

Blocking sunlight and obstructing views

Trees

If a tree is blocking sunlight or obstructing views, the only solution is to get the owner of the tree to agree to prune or remove it. If the issue cannot be resolved between the parties, mediation is a good option. CJCs offer free mediation services to help people resolve disputes without having to go to court. The LEC does not have the power to order a tree to be pruned or cut down for blocking sunlight or obstructing views unless the tree is causing or is likely to cause damage to property or injury to people.⁴

² Tree Disputes Act, ss 7 and 14B.

³ Ibid, s 9.

⁴ Ibid, Pt 2 and Pt 3; [Sell v Newfield \[2011\] NSWLEC 1367](#).

High hedges

If a hedge is blocking sunlight or obstructing views, it is still necessary for the affected person to try to resolve the issue with their neighbor. If the issue cannot be resolved between the parties, mediation is a good option. CJs offer free mediation services to help people resolve disputes without having to go to court.

As a last resort, the LEC can be applied to for an order.

The Court may make such orders as it thinks fit to remedy, restrain or prevent the severe obstruction of:⁵

- 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.

Leaf litter

Unless the owner of the land the tree is on agrees to remove or prune the tree, there is little that can be done to address trees that drop leaf litter. It is very unlikely that the Land and Environment Court will order a tree to be pruned or cut down for depositing leaf litter. The tree must be causing or be likely to cause damage to property or injury to people before the Court can get involved.⁶

Applying to the Land and Environment Court for an order

The LEC has special procedures for hearing tree (and hedge) disputes. These procedures are designed so that people can represent themselves rather than needing to engage a lawyer, although legal representation is possible.

Visit: [The LEC page on Class 2: Tree Disputes and Local Government Appeals](#) for more information about tree disputes, how to resolve them and the relevant procedures

Which disputes can the Court hear?

The Land and Environment Court can only hear tree disputes between neighbours where:

- the problematic tree or hedge is on privately owned land (not council owned or managed land), and;
- the land is zoned residential, rural-residential, village, township, industrial or business⁷ under the applicable Local Environmental Plan (**LEP**).

⁵ Tree Disputes Act, s 14D.

⁶ [Sell v Newfield \[2011\] NSWLEC 1367](#).

⁷ Tree Disputes Act, s 4.

Making an application to the Court

Landholders can apply to the Court to make an order to:⁸

- Remedy, restrain, or prevent a neighbour's tree from causing damage to their property,
- Prevent injury to people, or
- Remedy, restrain, or prevent a neighbour's high hedge (over 2.5m) from severely obstructing sunlight to their window or a view from their house.

The person seeking the order must fill in the Tree Dispute application form, as well as the Tree Dispute claim details form for either:

- damage to property or injury to a person; or
- high hedges.

At least four copies of the completed application must be filed, either:

- at the LEC's registry on:
Level 4,
225 Macquarie Street,
Sydney, or;
- at a Local Court registry, or;
- via post to the LEC at:
GPO Box 3565,
Sydney NSW 2001

Once the complete application and fee have been received by the Court, the Court will set a preliminary hearing. This will be held at the Court in Sydney or by telephone if the parties live outside metropolitan Sydney.

Visit: [The LEC website to view the pages on:](#)

- [Forms](#) to download the Tree Dispute Application [Form C], Tree Dispute Claim Details (High Hedges) [Form G] and/or Tree Dispute Claim Details (Damage to Property or Injury to a Person) [Form H].
- [Schedule of Court Fees](#) to check the current fee rates before attempting to file documents at the registry
- [What it might cost](#), particularly the "Waiver, postponement or remission of court fees" section for more information about applying to waive court fees

⁸ Tree Disputes Act, ss 7B and 14B.

Serving the application

A stamped copy of the application needs to be served on the neighbour on whose land the tree or hedge is situated and the local council. The neighbour and local council need to be served at least 21 days before the preliminary hearing.⁹ The Court is able to waive this requirement if it thinks that it is appropriate in the circumstances.¹⁰

The neighbour who has been served with the application will then be required to respond to the application by filing a Notice of Appearance with the Court.

The Court process

At the preliminary hearing both parties are to advise the Court their agreed or their own versions of the directions that they think should be made to prepare the matter for the final hearing. This includes things like when and where the final hearing should be held.

The final hearing will usually be held at the location of the tree or hedge. Sometimes the hearing will begin at the location of the tree or hedge and then move to the Court, or in regional NSW, the nearest courthouse. A Commissioner of the Court who is also an arborist usually conducts the final hearing. The Commissioner will usually make a decision on the day of the final hearing. The Court will notify the local council, as well as the Heritage Council if relevant, of any order it makes.

What must the Court consider?

Before making an order, the Court must consider things like:¹¹

- the location of the tree or hedge,
- the impact that pruning would have on the tree or hedge,
- whether the tree or hedge has any historical, cultural, social or scientific value,
- the tree or hedge's value as habitat and its contribution to the local ecosystem and biodiversity,
- the tree or hedge's contribution to privacy, landscaping and garden design, and
- the impact of the tree or hedge on soil stability and the water table.

For trees, the Court must also consider any steps that have been taken by either party to prevent or rectify any damage to property or to prevent any injury from occurring, as well as things other than the tree which might be causing the damage.¹²

For hedges, the Court must also consider any steps that have been taken by either party to prevent or rectify the obstruction, the amount and number of hours in the day of sunlight

⁹ Tree Disputes Act, ss 8 and 14C.

¹⁰ Ibid.

¹¹ Ibid, ss 12 and 14F.

¹² Ibid, s 12.

lost, the extent of any view obstruction, as well things other than the hedge which might be causing the obstruction.¹³

What orders can the Court make?

The Court has broad powers to make orders concerning trees and hedges.

Trees

The Court can make such orders as it thinks fit, including that:¹⁴

- the tree be pruned or removed, or maintained at a specific height or width,
- the tree be removed and replaced with a different species,
- the owner of the tree compensate their neighbour for damage caused by the tree.

The Court will only make an order if it is satisfied that the tree concerned has caused, is causing, or is likely in the next 12 months¹⁵ to cause damage to the applicant's property¹⁶ or is likely to cause injury to any person.¹⁷

The Court must not make an order unless the applicant has made a reasonable effort to reach an agreement with the owner of the tree about what should be done about it before going to Court.¹⁸

If the land on which the tree is situated is sold, the new owners of the land are also bound by any order that the Court makes, but only if the person who applied for the order has given them a copy of it.¹⁹

Case study: Tree Dispute – Damage to neighbouring property²⁰

Mr and Mrs Lee claimed that a Norfolk Island Pine growing on their neighbour, Ms Waugh's, property was damaging the wall that divides the two properties. There were a number of vertical and horizontal cracks in the wall within the vicinity of the tree.

Mr and Mrs Lee sought the removal of the tree and repair of the wall at Ms Waugh's expense. Mr and Mrs Lee also argued that the maintenance that they undertook on their property due to debris from the tree was unreasonable, and that the tree should be removed to prevent further damage.

¹³ Tree Disputes Act, s 14F.

¹⁴ Ibid, s 9.

¹⁵ See [Yang v Scerri \[2007\] NSWLEC 592](#).

¹⁶ Tree Disputes Act, s 10.

¹⁷ Ibid.

¹⁸ Ibid, ss 10 and 14E.

¹⁹ Ibid, s 16.

²⁰ See [Lee & anor v Waugh \[2012\] NSWLEC 1341](#).

The Court held that urban tree debris will ordinarily not provide the basis for the Court ordering the removal of a tree, and dismissed this part of the application.

The Court found that the tree's roots contributed to the wall damage. To determine the appropriate order to be made the Court considered the location of the tree, the likely impact of pruning the tree (including the branches and roots), the contribution of the tree to private and public amenity, and impact on soil stability. The Court found that if the tree was retained it would continue to grow and future damage might arise, and ordered that the tree be removed. Ms Waugh was ordered to have the tree removed at her own cost. Both parties were ordered to fund replacement of the dividing wall, with Ms Waugh ordered to pay 80 per cent and Mr and Mrs Lee ordered to pay 20 per cent.

Hedges

The Court can make such orders as it thinks fit, including that:²¹

- the hedge be pruned or removed, or maintained at a specific height or width,
- the trees in the hedge be removed and replaced with a different species of tree.

The Court cannot order the owner of the hedge to compensate their neighbour for any obstruction caused by the hedge.²²

The Court will only make an order if it is satisfied that the hedge is causing or will cause the *severe* obstruction of sunlight to a window of the applicant or any view from the applicant's house.²³

The Court does not have the power to make an order where the obstruction of solar panels is in dispute.²⁴

The Court must not make an order unless the applicant has made a reasonable effort to reach an agreement with the owner of the hedge about what should be done about it before going to Court.²⁵

If the land on which the hedge is situated is sold, the new owners of the land are also bound by any order that the Court makes, but only if the person who applied for the order has given them a copy of it.²⁶

²¹ Tree Disputes Act, ss 14D and 14F.

²² *Ibid*, s 14D(3).

²³ *Ibid*, s 14E.

²⁴ See [Hendry & anor v Olsson & anor \[2010\] NSWLEC 1302](#) at [29].

²⁵ Tree Disputes Act, s 14E.

²⁶ *Ibid*, s 16.

Case study: Damage to neighbouring property, sunlight and views²⁷

Mr Ardagh claimed that Weeping Fig trees on Mr Ellston's property had caused damage to his property and would continue to do so. He also claimed that some of the trees were originally planted as a hedge and were obstructing the sunlight to, and views from, his property's windows. Mr Ardagh sought the removal of seven of the Fig trees on Mr Ellston's property, the removal of roots from his own property, as well as remediation of his land, the dividing fence, and driveway. An onsite hearing was held to determine the matter.

The Court found that one of the Fig trees had caused only a minor portion of the damage to the driveway, and refused to order remediation of the driveway.

Mr Ardagh claimed that the Fig trees were responsible for sewer blockages in the past. The Court found that there was inadequate evidence of this as there were several other trees and shrubs on Mr Ardagh's property.

Mr Ardagh claimed that roots from the Fig trees had displaced the fence, but at the site hearing he was unable to demonstrate this to the Court. However, the Court found that the close proximity of two of the trees to the fence could cause damage in the near future. The Court made an order that the trees be removed and stumps poisoned. No order was made requiring the removal of the roots as no root damage had been caused. The Court found that the hedge did not severely obstruct Mr Ardagh's sunlight. The Court was not satisfied that the hedge severely obstructed Mr Ardagh's view from his dwelling, and did not make an order for the trees to be removed.

Appealing the Court's decision

Either party can appeal the LEC's decision, but only on the basis that the decision was based on an incorrect application of the law, not on the basis that they don't like the decision.²⁸

Enforcement of Court orders

It is an offence to fail to comply with the Court's order. The maximum penalty is \$110,000.²⁹

Additionally, the neighbour who has the benefit of the order can request the local council to carry out the work ordered by the Court. It is up to the council to decide whether they do or not, but if it does carry out the work, it can bring proceedings to recover the costs of carrying out the work from the tree's owner.³⁰

²⁷ See [Ardagh v Ellston \[2012\] NSWLEC 1235](#).

²⁸ [Land and Environment Court Act 1979 \(NSW\)](#), s 56A.

²⁹ Tree Disputes Act, s 15.

³⁰ *Ibid*, s 17.

Responding to requests or applications to remove trees or hedges

Individuals who are asked by their neighbour to remove or prune a tree or hedge may choose to comply with the request or negotiate with their neighbour to see if a compromise can be reached. Mediation may assist in reaching an agreement.

Before taking any action to prune or remove a tree, it is first necessary to check whether a Council permit is required.

Read: [EDO Factsheet on Clearing Trees on Urban Land and Environmental Zones](#) for more information about when a Council permit is required

If the neighbour applies to the LEC for an order, the options are to comply with the neighbour's demands or argue against the application in Court.

Electing to go to Court will involve arguing that the tree is not the cause of the alleged damage or posing a threat of injury; or that the hedge is not severely obstructing sunlight to or views from the applicant's home.

It is also possible to argue for some alternatives to the removal of the tree, for example the installation of root barriers or the pruning of the tree.

Visit: [The LEC page on Class 2: Tree Disputes and Local Government Appeals](#) for more information about tree disputes, how to resolve them and the relevant procedures

Costs

In tree disputes, parties are usually required to pay their own costs. Parties are rarely ordered to pay the other side's costs. The Court can, however, decide to order one party to pay the other's costs if it thinks that it would be reasonable in the circumstances. Factors that may influence the Court's decision to make a costs order are if a party has delayed proceedings, not provided documents, acted unreasonably, or commended the proceedings for an improper purpose.

Tree vandalism

If the problematic tree is on public land the best thing to do is contact the council to discuss the problem. It is an offence to damage or remove a tree that is growing in a public place.³¹

³¹ [Local Government Act 1993 \(NSW\)](#), s 629.

Tree vandalism for view enhancement is an increasing problem, especially in coastal areas. Many councils take the removal of trees to enhance views very seriously. A number of prosecutions have been carried out against residents who have vandalised trees. Some councils have also taken steps to continue the obstruction of the view by placing structures such as signs, shade cloth and shipping containers in place of the tree.

Tree vandalism should be reported to local council. Council may choose to investigate and, if there is sufficient evidence, prosecute the offender.