



Neighbourhood Disputes about Plants in lutruwita/Tasmania

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

This factsheet was last updated on 15 June 2023

What is this factsheet about?

In lutruwita/ Tasmania, neighbourhood disputes about plants are regulated under the *Neighbourhood Disputes About Plants Act 2017* (the **Act**). This factsheet provides information about the Act and the mechanisms it provides for resolving disputes between neighbours about plants that overhang or overshadow properties, or otherwise cause a nuisance. It will be useful for anyone who wants to get an understanding of the options to resolve these types of disputes.

Outline

(Click subheadings to skip to section)

- [What plants are covered by the Act?](#)
- [What are landowners' responsibilities under the Act?](#)
- [How can I resolve disputes about plants with my neighbours?](#)
- [If I cannot resolve the dispute with my neighbour directly, what can I do?](#)
- [Issues to consider before making an application to TASCAT](#)

What plants are covered by the Act?

The Act applies to both living and dead plants. "Plants" covered by the Act include:

- trees
- hedges or groups of plants
- the fruit, seeds, leaves or flowers of a plant
- a bare trunk
- any stump or root of a plant

The Act **does not** apply to:

- plants on a farm or in a nursery
- live boundary fences, such as hedges separating properties; or
- plants on some council properties or Crown land (such as public reserves and parks), rail corridors, road reserves or forestry land.

Visit: The [Department of Justice](#) website has further information about the Act.

What are landowners' responsibilities under the Act?

Landowners are responsible for managing plants on their property so that they don't create a nuisance to neighbours. This includes removing overhanging branches, pruning plants to reduce leaf litter and keeping trees trimmed to a reasonable height.

Under the Act, landowners are also responsible for ensuring any plants on their land do not:

- overhang neighbouring land
- cause serious injury or property damage, or create a risk of serious injury within the next 12 months
- do not cause a "substantial, ongoing and unreasonable interference" with the use and enjoyment of another area of land.

The Act provides mechanisms for resolving disputes about fulfilling these responsibilities.

NB: Under the Act, a "substantial, ongoing and unreasonable interference" may include:

- Severely obstructing sunlight from reaching a window, skylight or solar panel
- Severely obstructing a view, provided the plant in question is over 2.5 metres **and the view was not obstructed when you took possession of your property**

How can I resolve disputes about plants directly with my neighbours?

Talk to your neighbours

Wherever possible, neighbours are encouraged to resolve concerns about overhanging or nuisance plants informally.

This can be done by talking (or writing) to your neighbour about the impact their trees are having on you and what you think is a reasonable action to reduce that impact. Listen to what they have to say about your proposal and see whether any reasonable compromise can be reached.

If the plant dispute escalates so that it reaches the Tasmanian Civil and Administrative Tribunal (**TASCAT**), you will need to show that you made reasonable attempts to resolve things informally before resorting to legal action.

Serve a Branch Removal Notice on your neighbour

If speaking informally with your neighbour does not resolve the issue, you may give your neighbour a **Branch Removal Notice** the branch you are concerned about is less than 2.5m above the ground and extends at least 50cm into your land.

The **Branch Removal Notice** should:

- Give a reasonable date by which the branch should be removed (not less than 30 days from the date of the notice)
- Specify a date on which you or someone acting on your behalf will enter the property to remove the branch in the event it has not been removed
- Specify the name of the person who will enter the property to remove the branch in the event it has not been removed
- Include a written quote stating the estimated cost of entering, severing, and removing the branch
- Include a copy of Part 3 of the Act
- Request that the owner provide you with a written notice granting you, or the person acting on your behalf permission to enter their property on the specified date.

If the notice is not complied with by your neighbour (that is, the branch is not removed), you can remove the branch, **but you cannot enter the neighbouring property to do so.**

You can engage a professional to remove the branch and recover the costs from your neighbour (up to an amount of \$500). If your neighbour wants to dispute the amount they owe you, they can apply to the Magistrates Court for a determination of a “fair and reasonable” price for the work.

NB: A [template Branch Removal Notice](#) has been published by the Department of Justice.

Notice about Land Affected by a Plant

If plants are obstructing sunlight to your property, severely and unreasonably blocking your view, or creating an ongoing nuisance, you can give your neighbour a **Notice about Land Affected by a Plant**.

A **Notice about Land Affected by a Plant** must:

- set out how your land is affected by your neighbour's plant(s)
- specify a proposed solution (e.g., proposing to share the cost of removing a tree); and
- request that your neighbour responds to your proposal within 14 days.

Unlike a Branch Removal Notice, if your neighbour does not take any action in response to a **Notice about Land Affected by a Plant**, you cannot take the action yourself. You will need to apply for an order from TASCAT to resolve the matter. This is discussed in more detail below.

NB: A [template Notice about Land Affected by a Plant](#) has been published by the Department of Justice.

If I cannot resolve the dispute with my neighbour directly, what can I do?

If all reasonable steps have been taken to resolve the dispute with your neighbour informally have failed, you can apply to the Resource and Planning Stream of TASCAT for orders requiring your neighbour to take action to fix the plant nuisance and/or remedy any damage to land.

Making an application to TASCAT for orders

To commence Tribunal proceedings, you will need to complete an application form and pay the filing fee (currently \$353.60).

The application form must include the following information:

- A copy of the certificate of title for your property, and the property on which the plant is located
- If you are not the owner of your property, evidence that you have asked the owner to take action, but they have refused, or not responded to your request within 42 days
- Details of efforts taken to resolve the dispute including any copies of notices sent to the owner of the property on which the tree is located
- Evidence of the type of plant (i.e. photos of the relevant plant)

- A list of any other people who may need to be notified (for example, the relevant planning authority, the Heritage Council), including their address
- If you are seeking urgent interim orders, evidence (in the form of an affidavit or statutory declaration) that the tree poses an immediate threat to a person or property.

You must provide at least 3 copies of the application form to the Tribunal – with extra copies for any additional parties involved. **You** must provide copies of the application to all parties.

Visit: The application form to commence proceedings can be found on the [Resource and Planning Stream \(TASCAT\)](#) website.

Preliminary conference

Once your application has been filed, TASCAT will consider your application and, if satisfied that there is a relevant dispute, it will accept the application and set a date for a preliminary conference. A notice about the preliminary conference will be published in the newspaper.

At the preliminary conference, TASCAT will invite you and your neighbour (and any other parties) to briefly discuss your position and the orders that could be sought.

If TASCAT is not satisfied that you and your neighbour have made reasonable attempts to resolve the issue, TASCAT may direct you to attend a mediation conference (organised and facilitated by TASCAT).

After the preliminary conference, TASCAT will notify all parties of relevant dates for mediation and a final hearing (in case mediation is unsuccessful), and any further information that should be provided by any of the parties.

Mediation conference

If the parties are directed to participate in mediation, you should attend the mediation in good faith and try to resolve the dispute. To prepare for the mediation:

- compile any information that you have to support your view that the tree is causing an unreasonable risk or nuisance (for example, an arborist report discussing the health of the tree, photos of the view, any insurance assessment or property valuation that has referred to the tree)
- consider your neighbour's position (that is, think about why your neighbour may not want to remove the tree)
- think about a range of possible solutions, and which ones you would accept

- if you think that you'll need a support person to attend the mediation with you (whether a lawyer, friend or family member), ask the other parties for permission for that person to attend.

Ideally, a resolution will be agreed to at the mediation. However, either party may request some time to consider the options discussed at the mediation before agreeing. TASCAT will give the parties a reasonable amount of time to consider their position before confirming whether a resolution has been agreed to.

Full hearing

If mediation is unsuccessful, the matter will proceed to a full hearing. At the hearing, TASCAT will consider all the evidence presented by the parties. TASCAT may also go and inspect the property before making a decision.

TASCAT may either dismiss your application or make orders requiring your neighbour to take appropriate action to deal with the risk or nuisance – this could include removing the tree, pruning and regularly maintaining the tree, and repairing any damage to your property.

Orders

Orders made by TASCAT **must** be complied with by the landowner. If your neighbour sells the property before carrying out the required work, they must give any potential purchaser a copy of the order so the purchaser is aware that they will be required to undertake the work.

Landowners may also apply to vary or revoke an order. You will be notified if any application is made.

TASCAT will maintain a database of orders and applications made under the Act, so you can search to see whether any property is subject to an order. Searches currently cost \$25.50.

Visit: Further information about the Act and applications for orders can be found on the [Resource and Planning Stream \(TASCAT\)](#) website.

Issues to consider before making an application to TASCAT

If you are considering applying for orders from TASCAT you should be aware:

- You will need to read and comply with all TASCAT's Practice Directions and other directions issued (e.g., at the preliminary conference).

- To have the best chance of success, you may need to engage experts (such as arborists, planners, and/or engineers) to give evidence, and/or a lawyer to represent you. This can be costly.
- While TASCAT's general rule is that each party bears their own costs of an application for orders, this rule can be displaced in certain circumstances (e.g., where a party has not complied with directions, is being vexatious or has unreasonably prolonged the proceedings).

Read: Information Sheet 10 on the [Resource and Planning Stream \(TASCAT\) website](#) deals with the issue of costs in TASCAT

Evaluate this resource

EDO welcomes feedback on this factsheet. Your feedback will help us ensure we are providing useful information.

If you have any concerns or suggestions regarding this factsheet, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:

