



## Tree Disputes between Neighbours in NSW

*Disclaimer:*

*EDO does not have the capacity to provide advice or any other assistance in relation to tree disputes between neighbours.*

*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 on individual cases. 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 November 2023*

### 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 adjoining private land. It does not relate to trees on public land or disputes with public authorities about tree management.

### Is consent required to remove or prune a tree?

In most areas of NSW consent must be obtained from the local council before removing or pruning a tree on private property. Where a neighbour is seeking to remove or trim a tree on your property, most councils will require your consent before any works can be carried out. You should contact your local council for further information if you are approached directly by a neighbour.

If a neighbour enters your property to remove or prune a tree without consent, you can ask them to leave. If they refuse to leave they may be trespassing on your property.

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.<sup>1</sup>

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

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

## 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 certain statutory criteria.<sup>2</sup>

### 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. There is no cost involved, it is confidential and informal so you do not need legal representation.

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 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.<sup>3</sup>

## Blocking sunlight and obstructing views

### Trees

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<sup>2</sup> Tree Disputes Act, ss 7.

<sup>3</sup> Tree Disputes Act, s 9.

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, subject to the approval of the local council. 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. The LEC does not have the power to order a tree (that does not form part of a hedge, see below) to be pruned or cut down for blocking sunlight or obstructing views unless the tree is also causing or is likely to cause damage to property or injury to people.<sup>4</sup>

## High hedges

Part 2 of the Tree Disputes Act applies to groups of two or more trees, planted to form a hedge over 2.5 metres in height (above existing ground level). A tree is defined to include any woody perennial plant, any plant resembling a tree in form and size and any other plant prescribed by the regulations (section 3, Tree Disputes Act). Clause 4 of the *Trees (Disputes Between Neighbours) Regulation 2019* states that the definition of tree in the Tree Disputes Act includes bamboo, tiger grass/giant clumping grass and any plant that is a vine.

If trees that form part of a high hedge are blocking sunlight or obstructing views, it is still necessary for the affected person to try to resolve the issue with their neighbour. 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, orders can be sought from the LEC

The LEC may make such orders as it thinks fit in relation to high hedges to remedy, restrain or prevent the severe obstruction of:<sup>5</sup>

- 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 LEC will order a tree to be pruned or cut down for depositing leaf litter. There must be expert evidence that a tree is causing or be likely to cause damage to property or injury to people before the LEC may get involved.<sup>6</sup>

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<sup>4</sup> Tree Disputes Act, Pt 2 and Pt 3; [Sell v Newfield \[2011\] NSWLEC 1367. JONATHON DEANS AND MS ROSEMARY LAURENS v RAYMOND SILVERTHORNE AND MS LAURE SILVERTHORN \[2017\] NSWLEC 1523; BC201707572](#)

<sup>5</sup> Tree Disputes Act, s 14D.

<sup>6</sup> [Sell v Newfield \[2011\] NSWLEC 1367.](#)

## 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 including how to respond to an application under the Trees Disputes Act.

### Which disputes can the LEC hear?

The LEC may 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 business under the applicable Local Environmental Plan (**LEP**) or a zone with a purpose that has the same substantial character.<sup>7</sup>

### Making an application to the Land and Environment Court

Landholders can apply to the LEC to make an order to:<sup>8</sup>

- 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;

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<sup>7</sup> Tree Disputes Act, s 4.

<sup>8</sup> Tree Disputes Act, ss 7 and 14B.

- 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 LEC will set a preliminary hearing. This will be held at the LEC 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

### **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. Notice of the application must also be provided to the relevant authority that would be entitled to appear in proceedings in relation to the tree. This is usually the local council but may also be the Heritage Council if the tree is listed on the State Heritage Register.<sup>9</sup> The neighbour and local council or other authority need to be served at least **21 days** before the preliminary hearing.<sup>10</sup> The LEC is able to waive this requirement if it thinks that it is appropriate in the circumstances.<sup>11</sup>

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 LEC process**

At the preliminary hearing both parties are to advise the LEC 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 and whether the parties will rely on expert evidence.

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 LEC, or in

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<sup>9</sup> Contact Heritage NSW or search the State Heritage Inventory:  
<https://www.environment.nsw.gov.au/topics/heritage/search-heritage-databases>

<sup>10</sup> Tree Disputes Act, ss 8 and 14C.

<sup>11</sup> Tree Disputes Act s8(3)

regional NSW, the nearest courthouse. A Commissioner of the LEC 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 LEC will notify the local council, as well as the Heritage Council if relevant, of any order it makes.

### **What must the LEC consider?**

Before making an order, the LEC must consider things like:<sup>12</sup>

- 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 LEC 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.<sup>13</sup>

For hedges, the LEC 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 lost, the extent of any view obstruction, as well things other than the hedge which might be causing the obstruction.<sup>14</sup>

### **What orders can the LEC make?**

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

#### Trees

The LEC can make such orders as it thinks fit, including that:<sup>15</sup>

- 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 to property caused by the tree.

The LEC will only make an order if:

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<sup>12</sup> Tree Disputes Act, s 12.

<sup>13</sup> Tree Disputes Act, s 12.

<sup>14</sup> Tree Disputes Act, s 14F.

<sup>15</sup> Tree Disputes Act s 9 & s 14D.

- it is satisfied that the tree concerned has caused, is causing, or is likely in the next 12 months<sup>16</sup> to cause damage to the applicant's property<sup>17</sup> or is likely to cause injury to any person;<sup>18</sup> and
- 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.<sup>19</sup>

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 LEC makes, but only if the person who applied for the order has given them a copy of it.<sup>20</sup>

### **Case study: Tree Dispute – Damage to neighbouring property<sup>21</sup>**

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.

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

The LEC found that the tree's roots contributed to the wall damage. To determine the appropriate order to be made the LEC 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 LEC 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 LEC can make such orders as it thinks fit, including that:<sup>22</sup>

- the hedge be pruned or removed, or maintained at a specific height or width,

<sup>16</sup> See [Yang v Scerri \[2007\] NSWLEC 592](#).

<sup>17</sup> Tree Disputes Act, s 10.

<sup>18</sup> Tree Disputes Act, s 14E.

<sup>19</sup> Tree Disputes Act, ss 10.

<sup>20</sup> Tree Disputes Act, s 16.

<sup>21</sup> See [Lee & anor v Waugh \[2012\] NSWLEC 1341](#).

<sup>22</sup> Tree Disputes Act, ss 14D and 14F.

- the trees in the hedge be removed and replaced with a different species of tree.

The LEC cannot order the owner of the hedge to compensate their neighbour for any obstruction caused by the hedge.<sup>23</sup>

The LEC 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.<sup>24</sup>

The LEC does not have the power to make an order where the obstruction of solar panels is in dispute.<sup>25</sup>

The LEC 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.<sup>26</sup>

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 LEC makes, but only if the person who applied for the order has given them a copy of it.<sup>27</sup>

### **Case study: Damage to neighbouring property, sunlight and views<sup>28</sup>**

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 LEC 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 LEC found that there was inadequate evidence of this as there were several other trees and shrubs on Mr Ardagh's property.

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<sup>23</sup> Tree Disputes Act, s 14D(3).

<sup>24</sup> Tree Disputes Act, s 14E.

<sup>25</sup> See [Hendry & anor v Olsson & anor \[2010\] NSWLEC 1302](#) at [29]. See also *Baker v Swan* [2023] NSWLEC 1359 at [34] where the LEC stated the obstruction of sunlight to solar panels does not engage the jurisdiction of the Trees Act as the solar panel is not a window of a dwelling.

<sup>26</sup> Tree Disputes Act, s 14E.

<sup>27</sup> Tree Disputes Act, s 16.

<sup>28</sup> See [Ardagh v Ellston \[2012\] NSWLEC 1235](#).



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 LEC found that the close proximity of two of the trees to the fence could cause damage in the near future. The LEC made an order that these two trees be removed and stumps poisoned. No order was made requiring the removal of the roots as no root damage had been caused.

The LEC found that the hedge did not severely obstruct Mr Ardagh's sunlight. The LEC 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 on this basis.

### **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.<sup>29</sup>

### **Enforcement of LEC orders**

It is an offence to fail to comply with the Court's order. The maximum penalty is \$110,000.<sup>30</sup>

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.<sup>31</sup>

### **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 is alleging that the tree is causing damage to their property or will do so in the near future (next 12 months) or may cause an injury to a person, the onus is on that

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<sup>29</sup> [Land and Environment Court Act 1979 \(NSW\)](#), s 56A.

<sup>30</sup> Tree Disputes Act, s 15.

<sup>31</sup> Tree Disputes Act, s 17.

neighbour to provide evidence to support their claim. You can also ask that they quantify their loss, that is provide evidence as to the cost of repairing any alleged damage.

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. If you dispute the orders sought, you have to respond to the application by filing a Notice of Appearance with the LEC and serving it on the applicant, preferably prior to the preliminary hearing .

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

- [Forms to download - Notice of Appearance \[Form 6A\]](#)

Electing to go to LEC 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. You can also make submissions in relation to the contribution the tree makes to the local ecosystem and biodiversity along with natural landscape and public amenity. It is relevant to raise any historical, cultural, social or scientific value the tree has<sup>32</sup> (refer to 'What the LEC must consider' above).

You can seek and rely on expert evidence to support your position.<sup>33</sup>

If the applicant is successful, you may be required to pay compensation to repair the damage along with the costs of carrying out the order. If the damages are likely to be substantial, you should obtain legal advice on the extent of your liability.

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](#)

Read: [Land and Environment Court Practice Note: Class 2: Tree Applications for more information on the Disputes and Local Government Appeals](#) for more information on the relevant procedures

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<sup>32</sup> Tree Disputes Act, ss12 & 14F.

<sup>33</sup> Any expert giving written or oral evidence must comply with the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules 2005 (**UCPR**) and Division 2 of Part 31 of the UCPR. The [LEC Practice Note for Tree proceedings in Class 2](#) provides further information on experts.

## 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 LEC may, however, decide to order one party to pay the other's legal costs if it thinks that it would be fair and reasonable in the circumstances.<sup>34</sup> Factors that may be considered by the LECs as to whether to make a costs order are if a party has delayed proceedings, not provided documents, acted unreasonably, or commenced the proceedings for an improper purpose.<sup>35</sup>

## 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.<sup>36</sup>

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 your local council. Council may choose to investigate and, if there is sufficient evidence, prosecute the offender.

## 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:



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<sup>34</sup> [Land and Environment Court Rules 2007](#), r 3.7 (2).

<sup>35</sup> [Land and Environment Court Rules 2007](#), r 3.7 (3).

<sup>36</sup> [Local Government Act 1993 \(NSW\)](#), s 629.