



New South Wales

Trees (Disputes Between Neighbours) Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to enable the bringing of proceedings in the Land and Environment Court (*the Court*) to resolve disputes between neighbours about trees in urban areas. In particular, the Bill enables an owner of land to apply to the Court for an order to remedy, restrain or prevent damage to the owner's property, or to prevent injury, as a consequence of a tree situated on adjoining land.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 provides that the proposed Act applies only in relation to trees situated on land within residential, business and certain other urban zones under environmental

planning instruments made under the *Environmental Planning and Assessment Act 1979*. Clause 4 also provides that the proposed Act does not apply to trees situated on land vested in, or managed by, a local council, and for the regulations to extend or exclude the land to which the proposed Act applies.

Clause 5 abolishes the right that a person may otherwise have to bring any court action in nuisance as a result of damage caused by a tree to which the proposed Act applies.

Clause 6 makes it clear that an order of the Court under proposed Part 2 does not generally enable a person to carry out any work, or engage in any activity, for which a consent or other authorisation is required under another Act or that is prohibited under another Act. However, an order under proposed Part 2 is to have effect despite any requirement that would otherwise apply for a consent or other authorisation to be obtained in relation to the tree concerned under the *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977*. A local council or the Heritage Council (a **relevant authority**) may appear in proceedings brought under the proposed Act if such an authorisation of the relevant authority would otherwise be required. (See **clause 13**.)

Part 2 Court orders

Clause 7 enables an owner of land to apply to the Court for an order to remedy, restrain or prevent damage to property on the land, or to prevent injury to any person, as a consequence of a tree situated on adjoining land.

Clause 8 provides that an applicant for any such order must notify certain persons, including the owner of the tree concerned and any relevant authority who would be entitled to appear, under proposed section 13, in proceedings relating to the tree. The Court may direct that other persons be notified. The Court may also waive the requirement to give notice.

Clause 9 confers a discretion on the Court to 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 concerned. The clause provides a range of examples of orders that the Court may make.

Clause 10 provides, among other things, that the Court must not make an order under proposed Part 2 unless it is satisfied that the applicant has made a reasonable effort to reach agreement with the owner of the tree concerned and that the notification requirements set out in proposed section 8 have been complied with. Clause 10 also provides that the Court must not make such an order unless it is satisfied that the tree concerned:

- (a) has caused, is causing, or is likely in the near future to cause, damage to the applicant's property, or
- (b) is likely to cause injury to any person.

Clause 11 provides that, if the tree concerned is on Crown land and the matter has been referred to a local land board under the *Crown Lands Act 1989* or the *Western Lands Act 1901*, the Court must not make an order under proposed Part 2 unless the

local land board has completed or made its inquiry, report or recommendation and the applicant has been advised of any related decision by the Minister for Lands or Minister for Natural Resources.

Clause 12 requires the Court to consider a range of matters before determining an application made under the proposed Act.

Clause 14 provides that the Court must provide a copy of any order it makes under proposed Part 2 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 concerned under proposed section 13).

Part 3 Enforcement of orders

Clause 15 makes it an offence for a person to fail to comply with any requirement imposed on the person by an order under proposed Part 2. The maximum penalty for such an offence will be 1,000 penalty units (currently, \$110,000).

Clause 16 provides that an order under proposed Part 2 that requires an owner of land to carry out work in relation to a tree situated on the land binds any successor in title to the owner who is given notice of the order.

Clause 17 empowers a local council to enter land for the purpose of carrying out work relating to a tree situated on the land if the owner of the land has failed to carry out the work, within a specified period, in accordance with an order made under proposed Part 2. This clause also allows the council to recover in a court of competent jurisdiction the reasonable costs of carrying out such work.

Part 4 Miscellaneous

Clause 18 makes it clear that, except for the abolition (under proposed section 5) of rights to bring actions in nuisance relating to damage caused by trees to which the proposed Act applies, the proposed Act does not affect the rights that a person has under any other Act or law to interfere with a tree that is not owned by the person.

Clause 19 provides that the proposed Act binds the Crown.

Clause 20 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 21 is a formal provision that gives effect to the provisions set out in Schedule 1.

Clause 22 is a formal provision that gives effect to the amendments to the *Land and Environment Court Act 1979* and the regulations set out in Schedule 2.

Clause 23 provides for the review of the proposed Act within 2 years from the date of assent to the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains provisions enabling the Governor to make regulations of a savings or transitional nature. Schedule 1 also contains a clause that provides that proposed section 5, which abolishes rights to bring actions in nuisance relating to damage caused by trees to which the proposed Act applies, does not apply in respect of any proceedings commenced in a court before the commencement of that proposed section.

Schedule 2 Amendment of other legislation

Schedule 2 amends the *Land and Environment Court Act 1979*, *Conveyancing (Sale of Land) Regulation 2005* and *Environmental Planning and Assessment Regulation 2000* as set out in the Schedule.



New South Wales

Trees (Disputes Between Neighbours) Bill 2006

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New South Wales

Trees (Disputes Between Neighbours) Bill 2006

No. , 2006

A Bill for

An Act to provide for proceedings in the Land and Environment Court for the resolution of disputes between neighbours concerning trees; and for other purposes.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Trees (Disputes Between Neighbours) Act 2006*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6

3 Definitions 7

(1) In this Act: 8

council has the same meaning as it has in the *Local Government Act 1993*. 9

interfere with a tree includes cut down, fell, remove, kill, destroy, poison, ringbark, uproot or burn a tree or any part of a tree (including its roots). 10
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owner of land includes the occupier of the land. 14

the Court means the Land and Environment Court. 15

tree includes any woody perennial plant, any plant resembling a tree in form and size, and any other plant prescribed by the regulations. 16
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(2) Notes included in this Act do not form part of this Act. 18

4 Act applies to trees on certain land 19

(1) This Act applies only to trees situated on the following land: 20

(a) any land within a zone designated “residential” (but not “rural-residential”), “village”, “township”, “industrial” or “business” under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) or, having regard to the purpose of the zone, having the substantial character of a zone so designated, 21
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(b) any land of a kind prescribed by the regulations for the purposes of this section. 27
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(2) This Act does not apply to trees situated on: 29

(a) any land that is vested in, or managed by, a council, or 30

(b) any land of a kind prescribed by the regulations. 31

(3) For the purposes of this Act, a tree is situated on land if the tree is situated wholly or principally on the land. 32
33

5	Action in nuisance	1
	No action may be brought in nuisance as a result of damage caused by a tree to which this Act applies.	2 3
6	Authorisation of work or activity regulated by or under other Act	4
(1)	Except as provided by subsection (3), an order under Part 2 does not authorise or require a person:	5 6
(a)	to carry out any work or engage in any activity for which a consent or other authorisation must be obtained under any other Act without that consent or authorisation, or	7 8 9
(b)	to carry out any work or engage in any activity that is prohibited by or under any other Act.	10 11
(2)	Except as provided by subsection (3), a person may not apply to the Court for an order under Part 2 if the carrying out of the work or engagement in the activity concerned is prohibited by or under another Act.	12 13 14 15
(3)	An order under Part 2 has effect despite any requirement that would otherwise apply for a consent or other authorisation in relation to the tree concerned to be obtained under the <i>Environmental Planning and Assessment Act 1979</i> or the <i>Heritage Act 1977</i> .	16 17 18 19

Part 2	Court orders	1
7	Application to Court by affected land owner	2
	An owner of land may apply to the Court for an order to remedy, restrain or prevent damage to property on the land, or to prevent injury to any person, as a consequence of a tree to which this Act applies that is situated on adjoining land.	3 4 5 6
8	Notice of application for order to be given to owners of affected land	7
(1)	An applicant for an order under this Part must give at least 21 days notice of the lodging of the application and the terms of any order sought to:	8 9 10
(a)	the owner of the land on which the tree is situated, and	11
(b)	any relevant authority that would, in accordance with section 13, be entitled to appear in proceedings in relation to the tree, and	12 13
(c)	any other person the applicant has reason to believe will be affected by the order.	14 15
(2)	The Court may direct that notice of an application be given to a person or that notice be given in a specified manner or within a specified period.	16 17 18
(3)	The Court may waive the requirement to give notice or vary the period of notice under this section if it thinks it appropriate to do so in the circumstances.	19 20 21
9	Jurisdiction to make orders	22
(1)	The Court 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 the subject of the application concerned.	23 24 25
(2)	Without limiting the powers of the Court to make orders under subsection (1), an order made under that subsection may:	26 27
(a)	require the taking of specified action to remedy damage to property, or	28 29
(b)	require the taking of specified action to restrain or prevent damage or, if damage has already occurred, further damage, to property, or	30 31 32
(c)	require the taking of specified action to prevent injury to any person, or	33 34
(d)	require the making of an application to obtain any consent or other authorisation referred to in section 6 (1) (a), or	35 36

(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	1 2 3
(f)	authorise the applicant concerned to take specified action to prevent injury to any person, or	4 5
(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	6 7 8
(h)	require the payment of costs associated with carrying out an order under this section, or	9 10
(i)	require the payment of compensation for damage to property, or	11
(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.	12 13 14
10	Matters of which Court must be satisfied before making an order	15
(1)	The Court must not make an order under this Part unless it is satisfied:	16
(a)	that the applicant has made a reasonable effort to reach agreement with the owner of the land on which the tree is situated, and	17 18 19
(b)	if the requirement to give notice has not been waived, that the applicant has given notice of the application in accordance with section 8.	20 21 22
(2)	The Court must not make an order under this Part unless it is satisfied that the tree concerned:	23 24
(a)	has caused, is causing, or is likely in the near future to cause, damage to the applicant's property, or	25 26
(b)	is likely to cause injury to any person.	27
11	Trees on Crown land referred to local land board	28
(1)	The Court must not make an order under this Part if the tree concerned is on Crown land and the matter has been referred to a local land board, or a Chairperson of a local land board, under section 22 of the <i>Crown Lands Act 1989</i> or section 10A of the <i>Western Lands Act 1901</i> unless:	29 30 31 32
(a)	any inquiry, report or recommendation provided for in that section in relation to the matter has been completed or made, and	33 34
(b)	the applicant has been advised of any decision made by the Minister administering the <i>Crown Lands Act 1989</i> or the <i>Western Lands Act 1901</i> in relation to the matter.	35 36 37

- (2) In this section: 1
Crown land has the same meaning as it has in the *Crown Lands Act 1989*, and includes land dedicated for a public purpose under Part 5 of that Act. 2
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12 Matters to be considered by Court 5

Before determining an application made under this Part, the Court is to consider the following matters: 6
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- (a) the location of the tree concerned in relation to the boundary of the land on which the tree is situated and any premises, 8
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- (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, 10
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- (c) whether the tree has any historical, cultural, social or scientific value, 15
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- (d) any contribution of the tree to the local ecosystem and biodiversity, 17
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- (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, 19
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- (f) the intrinsic value of the tree to public amenity, 21
- (g) any impact of the tree on soil stability, the water table or other natural features of the land or locality concerned, 22
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- (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: 24
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- (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 27
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- (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, 31
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- (i) if the applicant alleges that the tree concerned is likely to cause injury to any person: 34
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- (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 36
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(ii)	any steps taken by the applicant or the owner of the land on which the tree is situated to prevent any such injury,	1
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(j)	such other matters as the Court considers relevant in the circumstances of the case.	3
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13	Appearance by local council or Heritage Council	5
	A local council or the Heritage Council (a <i>relevant authority</i>) may appear before the Court in any proceedings under this Part in relation to a tree if the consent or other authorisation of the relevant authority to interfere with the tree would be required, in the absence of section 6 (3), under the <i>Environmental Planning and Assessment Act 1979</i> or the <i>Heritage Act 1977</i> .	6
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14	Court to provide copy of order to local council and Heritage Council	12
	The Court must provide a copy of any order it makes under this Part to:	13
(a)	the council of the local government area in which the tree is situated, and	14
		15
(b)	the Heritage Council if the Heritage Council appeared in the proceedings concerned under section 13.	16
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Part 3	Enforcement of orders	1
15	Failure to comply with order	2
(1)	A person must not fail to comply with any requirement imposed on the person by an order under Part 2.	3
	Maximum penalty: 1,000 penalty units.	4
(2)	Proceedings for an offence under subsection (1) may be taken before the Court in its summary jurisdiction.	5
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		7
16	Successors in title bound by order	8
(1)	If the Court makes an order under Part 2 requiring a person who is an owner of land on which a tree is situated (an <i>original owner</i>) to carry out work in relation to the tree within a specified period and the original owner ceases to be the owner of the land before the work is carried out, a successor in title to the owner:	9
	(a) is required to carry out that work, and	10
	(b) to that extent, is bound by the order in the same way as the original owner (except as provided by this section).	11
(2)	The successor in title is bound by the order only if the applicant for the order gives a copy of the order to the successor in title.	12
(3)	For the purposes of this section the specified period within which the work is required to be carried out under the order is taken to commence from the date on which the copy of the order is given to the successor in title.	13
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17	Carrying out of work by local council	23
(1)	If the Court has made an order under Part 2 requiring the owner of land on which a tree is situated to carry out work in relation to the tree within a specified period, a person authorised by the council of the local government area in which the tree is situated (an <i>authorised person</i>) may enter the land for the purpose of either or both of the following:	24
	(a) ascertaining whether the owner has carried out the work in accordance with the order,	25
	(b) carrying out the work if the owner has failed to carry out the work in accordance with the order.	26
(2)	An authorised person may enter land under this section only if the applicant for the order concerned has requested the council to act under this section.	27
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| (3) | Before an authorised person enters land under this section, the council must give the owner of the land written notice of the intention to enter the land. | 1
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| (4) | The notice must specify the day on which the authorised person intends to enter the land and must be given before that day. | 4
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| (5) | This section does not require notice to be given: | 6 |
| | (a) if entry to the land is made with the consent of the owner of the land, or | 7
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| | (b) if entry to the land is required because of the existence or reasonable likelihood of a serious risk to safety, or | 9
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| | (c) if entry is required urgently and the case is one in which the general manager of the council has authorised in writing (in the particular case) entry without notice. | 11
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| (6) | An authorised person may not enter or inspect, or carry out work on, land under this section unless the authorised person is in possession of an authority and produces the authority if required to do so by the owner of the land. | 14
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| (7) | The authority must be a written authority that is issued by the council and that: | 18
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| | (a) states that it is issued under this Act, and | 20 |
| | (b) gives the name of the person to whom it is issued, and | 21 |
| | (c) describes the land to which the authority applies, and | 22 |
| | (d) states that the person has the power to enter the land and states either or both of the following: | 23
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| | (i) that entry to the land is required for the purpose of ascertaining whether the owner has carried out work in accordance with an order under Part 2 of this Act, | 25
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| | (ii) that the person has the power to carry out work in accordance with such an order, and | 28
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| | (e) identifies this section as the source of the powers referred to in paragraph (d), and | 30
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| | (f) states the date (if any) on which it expires, and | 32 |
| | (g) bears the signature of the general manager of the council. | 33 |
| (8) | The council may recover in a court of competent jurisdiction the reasonable costs of carrying out work under this section from the owner of the land on which the tree is situated. | 34
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Part 4	Miscellaneous	1
18	Rights under other Acts or laws	2
	Except as provided by section 5, nothing in this Act affects the rights that a person has under any other Act or law to interfere with any tree that is not owned by the person.	3 4 5
	Note. For example, under the <i>Access to Neighbouring Land Act 2000</i> , a Local Court may make a neighbouring land access order that authorises an owner of land to access, and carry out work on, adjoining land for any of the following purposes:	6 7 8 9
	(a) ascertaining whether any hedge, tree or shrub is dangerous, dead, diseased, damaged or insecurely rooted,	10 11
	(b) replacing any hedge, tree or shrub,	12
	(c) removing, felling, cutting back or treating any hedge, tree or shrub.	13
	By way of another example, under the <i>Electricity Supply Act 1995</i> , an electricity network operator may, in certain circumstances, trim or remove a tree if the operator has reasonable cause to believe that the tree:	14 15 16
	(a) could destroy, damage or interfere with its electricity works, or	17
	(b) could make its electricity works become a potential cause of bush fire or a potential risk to public safety.	18 19
19	Act to bind Crown	20
	This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.	21 22 23
20	Regulations	24
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	25 26 27 28
21	Savings, transitional and other provisions	29
	Schedule 1 has effect.	30
22	Amendment of other legislation	31
	The Act and regulations specified in Schedule 2 are amended as set out in that Schedule.	32 33
23	Review of Act	34
	(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	35 36 37

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| (2) | The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to this Act. | 1 |
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| (3) | A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years. | 3 |
| | | 4 |

Schedule 1	Savings, transitional and other provisions	1
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	(Section 21)	3
1	Regulations	4
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act	5 6 7
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	8 9
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	10 11 12
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13 14 15
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16 17 18
2	Proceedings relating to liability in nuisance	19
	Section 5 does not apply in respect of any proceedings commenced in a court before the commencement of that section.	20 21

Schedule 2	Amendment of other legislation	1
	(Section 22)	2
2.1	Conveyancing (Sale of Land) Regulation 2005	3
	Schedule 3 Prescribed warranties	4
	Insert at the end of Part 3 (with appropriate clause numbering):	5
	Any application for an order under the <i>Trees (Disputes Between Neighbours) Act 2006</i> or any order under that Act that requires work to be carried out in relation to a tree if that work has not been carried out fully in compliance with that order.	6 7 8 9
2.2	Environmental Planning and Assessment Regulation 2000	10
	Schedule 4 Planning certificates	11
	Insert at the end of the Schedule (with appropriate clause numbering):	12
	Orders under Trees (Disputes Between Neighbours) Act 2006	13
	Whether an order has been made under the <i>Trees (Disputes Between Neighbours) Act 2006</i> to carry out work in relation to a tree on the land (but only if the council has been notified of the order).	14 15 16 17
2.3	Land and Environment Court Act 1979 No 204	18
[1]	Section 18 Class 2—local government and miscellaneous appeals and applications	19 20
	Omit “and” from section 18 (e).	21
[2]	Section 18 (g)	22
	Insert at the end of section 18 (f):	23
	, and	24
	(g) applications under the <i>Trees (Disputes Between Neighbours) Act 2006</i> .	25 26
[3]	Section 20 Class 4—environmental planning and protection and development contract civil enforcement	27 28
	Insert in alphabetical order in section 20 (3) (a):	29
	<i>Trees (Disputes Between Neighbours) Act 2006</i> ,	30

Trees (Disputes Between Neighbours) Bill 2006

Schedule 2 Amendment of other legislation

[4] Section 21 Class 5—environmental planning and protection summary enforcement	1
	2
Insert before section 21 (i):	3
(hc) proceedings for an offence under section 15 of the <i>Trees (Disputes Between Neighbours) Act 2006</i> , and	4
	5