

Passed by both Houses



New South Wales

Trees (Disputes Between Neighbours) Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Trees (Disputes Between Neighbours) Bill 2006

Act No , 2006

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

(1) In this Act:

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

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).

owner of land includes the occupier of the land.

the Court means the Land and Environment Court.

tree includes any woody perennial plant, any plant resembling a tree in form and size, and any other plant prescribed by the regulations.

(2) Notes included in this Act do not form part of this Act.

4 Act applies to trees on certain land

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

(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,

(b) any land of a kind prescribed by the regulations for the purposes of this section.

(2) This Act does not apply to trees situated on:

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

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

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

5 Action in nuisance

No action may be brought in nuisance as a result of damage caused by a tree to which this Act applies.

6 Authorisation of work or activity regulated by or under other Act

- (1) Except as provided by subsection (3), an order under Part 2 does not authorise or require a person:
 - (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
 - (b) to carry out any work or engage in any activity that is prohibited by or under any other Act.
- (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.
- (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 *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977*.

Part 2 Court orders

7 Application to Court by affected land owner

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.

8 Notice of application for order to be given to owners of affected land

- (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:
 - (a) the owner of the land on which the tree is situated, and
 - (b) any relevant authority that would, in accordance with section 13, be entitled to appear in proceedings in relation to the tree, and
 - (c) any other person the applicant has reason to believe will be affected by the order.
- (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.
- (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.

9 Jurisdiction to make orders

- (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.
- (2) Without limiting the powers of the Court to make orders under subsection (1), an order made under that subsection may:
 - (a) require the taking of specified action to remedy damage to property, or
 - (b) require the taking of specified action to restrain or prevent damage or, if damage has already occurred, further damage, to property, or
 - (c) require the taking of specified action to prevent injury to any person, or
 - (d) require the making of an application to obtain any consent or other authorisation referred to in section 6 (1) (a), or

- (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
- (f) authorise the applicant concerned to take specified action to prevent injury to any person, or
- (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
- (h) require the payment of costs associated with carrying out an order under this section, or
- (i) require the payment of compensation for damage to property, or
- (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.

10 Matters of which Court must be satisfied before making an order

- (1) The Court must not make an order under this Part unless it is satisfied:
 - (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
 - (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.
- (2) The Court must not make an order under this Part 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.

11 Trees on Crown land referred to local land board

- (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 *Crown Lands Act 1989* or section 10A of the *Western Lands Act 1901* unless:
 - (a) any inquiry, report or recommendation provided for in that section in relation to the matter has been completed or made, and
 - (b) the applicant has been advised of any decision made by the Minister administering the *Crown Lands Act 1989* or the *Western Lands Act 1901* in relation to the matter.

(2) In this section:

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.

12 Matters to be considered by Court

Before determining an application made under this Part, the Court is to consider the following matters:

- (a) the location of the tree concerned in relation to the boundary of the land on which the tree is situated and any premises,
- (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,
- (c) whether the tree has any historical, cultural, social or scientific value,
- (d) any contribution of the tree to the local ecosystem and biodiversity,
- (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,
- (f) the intrinsic value of the tree to public amenity,
- (g) any impact of the tree on soil stability, the water table or other natural features of the land or locality concerned,
- (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:
 - (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
 - (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,
- (i) if the applicant alleges that the tree concerned is likely to cause injury to any person:
 - (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

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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,
 - (j) such other matters as the Court considers relevant in the circumstances of the case.

13 Appearance by local council or Heritage Council

A local council or the Heritage Council (a *relevant authority*) 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 *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977*.

14 Court to provide copy of order to local council and Heritage Council

The Court must provide a copy of any order it makes under this Part to:

- (a) the council of the local government area in which the tree is situated, and
- (b) the Heritage Council if the Heritage Council appeared in the proceedings concerned under section 13.

Part 3 Enforcement of orders

15 Failure to comply with order

- (1) A person must not fail to comply with any requirement imposed on the person by an order under Part 2.
Maximum penalty: 1,000 penalty units.
- (2) Proceedings for an offence under subsection (1) may be taken before the Court in its summary jurisdiction.

16 Successors in title bound by order

- (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 *original owner*) 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:
 - (a) is required to carry out that work, and
 - (b) to that extent, is bound by the order in the same way as the original owner (except as provided by this section).
- (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.
- (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.

17 Carrying out of work by local council

- (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 *authorised person*) may enter the land for the purpose of either or both of the following:
 - (a) ascertaining whether the owner has carried out the work in accordance with the order,
 - (b) carrying out the work if the owner has failed to carry out the work in accordance with the order.
- (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.

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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.
 - (4) The notice must specify the day on which the authorised person intends to enter the land and must be given before that day.
 - (5) This section does not require notice to be given:
 - (a) if entry to the land is made with the consent of the owner of the land, or
 - (b) if entry to the land is required because of the existence or reasonable likelihood of a serious risk to safety, or
 - (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.
 - (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.
 - (7) The authority must be a written authority that is issued by the council and that:
 - (a) states that it is issued under this Act, and
 - (b) gives the name of the person to whom it is issued, and
 - (c) describes the land to which the authority applies, and
 - (d) states that the person has the power to enter the land and states either or both of the following:
 - (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,
 - (ii) that the person has the power to carry out work in accordance with such an order, and
 - (e) identifies this section as the source of the powers referred to in paragraph (d), and
 - (f) states the date (if any) on which it expires, and
 - (g) bears the signature of the general manager of the council.
 - (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.
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Part 4 Miscellaneous

18 Rights under other Acts or laws

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.

Note. For example, under the *Access to Neighbouring Land Act 2000*, 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:

- (a) ascertaining whether any hedge, tree or shrub is dangerous, dead, diseased, damaged or insecurely rooted,
- (b) replacing any hedge, tree or shrub,
- (c) removing, felling, cutting back or treating any hedge, tree or shrub.

By way of another example, under the *Electricity Supply Act 1995*, an electricity network operator may, in certain circumstances, trim or remove a tree if the operator has reasonable cause to believe that the tree:

- (a) could destroy, damage or interfere with its electricity works, or
- (b) could make its electricity works become a potential cause of bush fire or a potential risk to public safety.

19 Act to bind Crown

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.

20 Regulations

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.

21 Savings, transitional and other provisions

Schedule 1 has effect.

22 Amendment of other legislation

The Act and regulations specified in Schedule 2 are amended as set out in that Schedule.

23 Review of Act

- (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.

- (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.
- (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.

Schedule 1 Savings, transitional and other provisions

(Section 21)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (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.
- (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:
 - (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
 - (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.

2 Proceedings relating to liability in nuisance

Section 5 does not apply in respect of any proceedings commenced in a court before the commencement of that section.

Schedule 2 Amendment of other legislation

(Section 22)

2.1 Conveyancing (Sale of Land) Regulation 2005

Schedule 3 Prescribed warranties

Insert at the end of Part 3 (with appropriate clause numbering):

Any application for an order under the *Trees (Disputes Between Neighbours) Act 2006* 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.

2.2 Environmental Planning and Assessment Regulation 2000

Schedule 4 Planning certificates

Insert at the end of the Schedule (with appropriate clause numbering):

Orders under Trees (Disputes Between Neighbours) Act 2006

Whether an order has been made under the *Trees (Disputes Between Neighbours) Act 2006* to carry out work in relation to a tree on the land (but only if the council has been notified of the order).

2.3 Land and Environment Court Act 1979 No 204

[1] Section 18 Class 2—local government and miscellaneous appeals and applications

Omit “and” from section 18 (e).

[2] Section 18 (g)

Insert at the end of section 18 (f):

, and

(g) applications under the *Trees (Disputes Between Neighbours) Act 2006*.

[3] Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Insert in alphabetical order in section 20 (3) (a):

Trees (Disputes Between Neighbours) Act 2006,

Trees (Disputes Between Neighbours) Bill 2006

Schedule 2 Amendment of other legislation

[4] Section 21 Class 5—environmental planning and protection summary enforcement

Insert before section 21 (i):

- (hc) proceedings for an offence under section 15 of the *Trees (Disputes Between Neighbours) Act 2006*, and

[5] Section 34A Proceedings to which on-site hearing procedures apply (as amended by the Crimes and Courts Legislation Amendment Act 2006)

Insert at the end of section 34A (1):

- (f) proceedings in Class 2 of the Court's jurisdiction that are brought under section 7 of the *Trees (Disputes Between Neighbours) Act 2006*.