



New South Wales

## Trees (Disputes Between Neighbours) Bill 2006

### Explanatory note

#### 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 particular, the Bill enables an owner of land to apply to the Court for an order to remedy 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

**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 a tree on land within certain zones under environmental planning instruments made under the *Environmental Planning and Assessment Act 1979*.

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**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 5 also makes it clear that, except for the abolition of this right, 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 6** makes it clear that the proposed Act does not generally enable a person to carry out any work or activity for which a consent or other authorisation is required under another Act or that is prohibited under another Act. However, an order granted under the proposed Act 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 relevant authority (that is, a local council or the Heritage Council) may appear in proceedings brought under the proposed Act if such an authorisation of the relevant authority would otherwise be required. (See **clause 13**.)

**Clause 7** enables an owner of land to apply to the Court for an order to remedy or prevent damage to property on the land, or to prevent injury, 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 the proposed Act 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 9 have been complied with. Clause 11 also provides that the Court must not make 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) the tree concerned is likely to cause injury to a 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 the proposed Act 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.

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

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**Clause 14** provides that an order under the proposed Act 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.

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

**Clause 16** 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 or by a specified date, in accordance with an order made under the Act. This proposed section also allows the council to recover in a court of competent jurisdiction the reasonable costs of entering the land, and of inspecting and carrying out such work.

**Clause 17** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 18** is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 1.

**Clause 19** is a formal provision that gives effect to the amendments to the Acts and Regulation set out in Schedule 2.

**Clause 20** provides for the review of the proposed Act in 5 years.

## **Schedule 1      Savings, transitional and other provisions**

**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of other legislation**

**Schedule 2** amends the Acts and regulation specified in the Schedule. Among other things, Schedule 2 amends the *Local Government Act 1993* to enable a local council to order an owner or occupier of land to carry out work, specified in the order, in relation to a tree to ensure the safety of users, occupiers or owners of adjoining land.

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## **Trees (Disputes Between Neighbours) Bill 2006**

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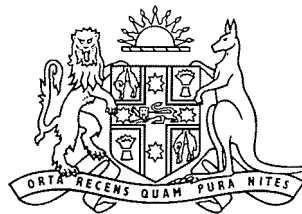
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New South Wales

## **Trees (Disputes Between Neighbours) Bill 2006**

No. , 2006

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### **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.

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Clause 1            Trees (Disputes Between Neighbours) Bill 2006

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## The Legislature of New South Wales enacts:

### 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.

**relevant authority** means a council or the Heritage Council.

**the Court** means the Land and Environment Court.

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

### 4 Act applies to trees on certain land

This Act applies only in relation to a tree situated on the following land or on land that adjoins the following land:

- (a) 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 prescribed by the regulations for the purposes of this section.

### 5 Effect of Act on certain rights

(1) Except as provided by subsection (2), 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,

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- (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.

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

## **6 Act does not generally authorise work or activity regulated by or under other Act**

- (1) Except as provided by subsection (3), nothing in this Act enables 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 the required 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 this Act if the carrying out of the work or engagement in the activity concerned is prohibited by or under another Act.
- (3) An order granted under this Act 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*.

## **7 Application to Court by affected land owner**

An owner of land may apply to the Court for an order to remedy or prevent damage to property on the land, or to prevent injury to a person, as a consequence of a tree 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 Act must give at least 21 days notice of the lodging of the application and the terms of any order sought:
  - (a) to the owner of the tree the subject of the application, and
  - (b) to the relevant authority that would, in accordance with section 13, be entitled to appear in proceedings in relation to the tree, and



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Clause 9            Trees (Disputes Between Neighbours) Bill 2006

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- (c) to 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 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) authorise the applicant concerned to take specified action to remedy or prevent damage or (if damage has already occurred) further damage to property, or
  - (e) authorise the applicant concerned to take specified action to prevent injury to any person, or
  - (f) authorise land to be entered for the purposes of carrying out an order under this section, or
  - (g) require the payment of costs associated with carrying out an order under this section, or
  - (h) require the payment of compensation for damage to property.

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

- (1) The Court must not make an order under this Act unless it is satisfied:
  - (a) that the applicant has made a reasonable effort to reach agreement with the owner of the tree the subject of the application, 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 9.

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- (2) The Court must not make an order under this Act 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) the tree concerned is likely to cause injury to a person.

## 11 Trees on Crown land referred to local land board

- (1) The Court must not make an order under this Act 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 Further matters to be considered by Court

Before determining an application made under this Act, 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 the tree was grown in accordance with any tree planting policy of the council in which the tree is located,
- (c) 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,
- (d) whether the tree has any historical, cultural or scientific value,
- (e) any contribution of the tree to the local ecosystem and biodiversity,
- (f) any contribution of the tree to the natural landscape and scenic value of the land on which it is situated or the locality concerned,
- (g) the value of the tree to public amenity,

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Clause 13      Trees (Disputes Between Neighbours) Bill 2006

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- (h) any impact of the tree on soil stability, the water table or other natural features of the land or locality concerned,
- (i) 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 action 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 tree to prevent or rectify any such damage,
- (j) if the applicant alleges that the tree concerned is likely to cause injury to a person:
  - (i) anything, other than the tree, that has contributed, or is contributing, to any such likelihood, including any action 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 tree to prevent any such injury,
- (k) such other matters as the Court considers relevant in the circumstances of the case.

### **13 Appearance by local council or Heritage Council**

A relevant authority may appear before the Court in any proceedings under this Act 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 Certain successors in title bound by order**

If the Court orders the owner of land on which a tree is situated to carry out work in relation to a tree, any successor in title to the owner is bound by that order in the same way as that owner.

### **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 this Act.  
Maximum penalty: 1,000 penalty units.
- (2) Proceedings for an offence under subsection (1) may be taken before the Court in its summary jurisdiction.

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## 16 Carrying out of work by local council

- (1) If the Court has ordered the owner of land on which a tree is situated to carry out work in relation to the tree within a specified period or by a specified date under this Act, a person authorised by the council of the 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) 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.
- (3) The notice must specify the day on which the person intends to enter the land and must be given before that day.
- (4) 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.
- (5) An authorised person may not enter or inspect, or carry out work on, land under this section unless the person is in possession of an authority and produces the authority if required to do so by the owner of the land.
- (6) 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 this Act,
    - (ii) that the person has the power to carry out work in accordance with such an order, and

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Clause 17      Trees (Disputes Between Neighbours) Bill 2006

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- (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.
- (7) The council may recover the reasonable costs of entering the land, and of inspecting and carrying out work, under this section from the owner of the tree in a court of competent jurisdiction.
- (8) In this section:  
*area* has the same meaning as it has in the *Local Government Act 1993*.

## **17 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.

## **18 Savings, transitional and other provisions**

Schedule 1 has effect.

## **19 Amendment of other legislation**

The Acts and Regulation specified in Schedule 2 are amended as set out in that Schedule.

## **20 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 5 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 5 years.

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Trees (Disputes Between Neighbours) Bill 2006

Savings, transitional and other provisions

Schedule 1

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## **Schedule 1      Savings, transitional and other provisions**

(Section 18)

### **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.

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Trees (Disputes Between Neighbours) Bill 2006

Schedule 2 Amendment of other legislation

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## Schedule 2 Amendment of other legislation

(Section 19)

### 2.1 Conveyancing (Sale of Land) Regulation 2005

#### Schedule 3 Prescribed warranties

Insert at the end of Part 3:

- 17** 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 Land and Environment Court Act 1979 No 204

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

Insert at the end of section 18 (f):

, and

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

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

Insert after section 21 (ha):

- (hb) proceedings for an offence under section 16 of the *Trees (Disputes Between Neighbours) Bill 2006*, and

### 2.3 Local Government Act 1993 No 30

#### Section 124 Orders

Insert after the matter relating to item 12 in the Table:

- |           |  |   |                           |
|-----------|--|---|---------------------------|
| <b>13</b> | To carry out work, specified in the order, in relation to a tree to ensure the safety of users, occupiers or owners of adjoining land. | The safety of users, occupiers or owners of adjoining land renders it necessary to do so. | Owner or occupier of land |
|-----------|--|---|---------------------------|