

Trees (Disputes Between Neighbours) Amendment Act 2010 No 27

[2010-27]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

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Trees (Disputes Between Neighbours) Amendment Act 2010 No 27



New South Wales

An Act to amend the *Trees (Disputes Between Neighbours) Act 2006* to provide for the resolution of disputes about high hedges that block sunlight or views and to make further provision in relation to the enforcement of orders and the jurisdiction of the Land and Environment Court under that Act; and for other purposes.

1 Name of Act

This Act is the *Trees (Disputes Between Neighbours) Amendment Act 2010*.

2 Commencement

- (1) Except as provided by subsection (2), this Act commences on the date of assent to this Act.
- (2) Schedule 1 [1], [5]–[8], [11]–[13], [16] and [18] commence on 2 August 2010.

Schedule 1 Amendment of *Trees (Disputes Between Neighbours) Act 2006 No 126*

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (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.

window includes a glass sliding door, a door with a window, a skylight and any other similar thing.

[2] Section 3 (1A)

Insert after section 3 (1):

(1A) For the purposes of this Act:

- (a) a reference to land within a zone designated “rural-residential” includes a reference to land within a “large lot residential” land use zone, and
- (b) a reference to land within a particular designated zone includes a reference to land within any zone prescribed by the regulations as a zone equivalent to that particular designated zone but does not include a reference to land within any zone prescribed by the regulations as a zone that is not equivalent to that particular designated zone.

[3] Section 4 Act applies to trees on certain land

Omit “(but not “rural-residential”)” from section 4 (1) (a).

Insert instead “, ‘rural-residential’”.

[4] Section 4 (4)

Insert after section 4 (3):

- (4) Without limiting subsection (3), a tree that is removed following damage or injury that gave rise to an application under Part 2 is still taken to be situated on land for the purposes of the application if the tree was situated wholly or principally on the land immediately before the damage or injury occurred.

[5] Section 5 Action in nuisance

Omit “this Act applies”.

Insert instead “Part 2 applies or as a result of an obstruction of sunlight to the window of a dwelling, or of a view from a dwelling, caused by trees to which Part 2A applies”.

[6] Section 6 Authorisation of work or activity regulated by or under other Act

Insert “or 2A” after “Part 2” wherever occurring.

[7] Part 2, heading

Insert “—trees that cause or are likely to cause damage or injury” after “Court orders”.

[8] Section 11 Trees on Crown land referred to local land board

Omit section 11 (2).

[9] Section 12 Matters to be considered by Court

Insert after section 12 (b):

- (b1) whether interference with the trees would, in the absence of section 25 (t) (Legislative exclusions) of the *Native Vegetation Act 2003*, require approval under that Act,
- (b2) the impact any pruning (including the maintenance of the tree at a certain height, width or shape) would have on the tree,
- (b3) any contribution of the tree to privacy, landscaping, garden design, heritage values or protection from the sun, wind, noise, smells or smoke or the amenity of the land on which it is situated,

[10] Section 14 Court to provide copy of order to local council and Heritage Council

Insert “(other than an order dismissing an application)” after “Part”.

[11] Part 2A

Insert after section 14:

Part 2A Court orders—high hedges that obstruct sunlight or views

14A Application of Part

- (1) This Part applies only to groups of 2 or more trees that:
 - (a) are planted (whether in the ground or otherwise) so as to form a hedge, and
 - (b) rise to a height of at least 2.5 metres (above existing ground level).
- (2) Despite section 4, this Part does not apply to trees situated on the following land:
 - (a) any land within a zone designated “rural-residential” 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 that zone,
 - (b) Crown land.

14B Application to Court by affected land owner

An owner of land may apply to the Court for an order to remedy, restrain or prevent a severe obstruction of:

- (a) sunlight to a window of a dwelling situated on the land, or
- (b) any view from a dwelling situated on the land,

if the obstruction occurs as a consequence of trees to which this Part applies being situated on adjoining land.

14C 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 trees are situated, and
 - (b) any relevant authority that would, in accordance with section 14G, be entitled to appear in proceedings in relation to the trees, 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.

14D Jurisdiction to make orders

- (1) The Court may make such orders as it thinks fit to remedy, restrain or prevent the severe obstruction of:
 - (a) sunlight to a window of a dwelling situated on the applicant's land, or
 - (b) any view from a dwelling situated on the applicant's land,if the obstruction occurs as a consequence of trees that are 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 do any or all of the following:
 - (a) require the taking of specified action to remedy the obstruction of sunlight or of a view,
 - (b) require the taking of specified action to restrain or prevent the obstruction of sunlight or of a view,
 - (c) require the taking of specified action to maintain a tree or trees at a certain height, width or shape,
 - (d) require the removal of a tree or trees and the replacement of the tree or trees with a different species of tree,
 - (e) require the making of an application to obtain any consent or other

authorisation referred to in section 6 (1) (a),

- (f) authorise the applicant concerned to take specified action to remedy, restrain or prevent the obstruction of sunlight or of a view,
- (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),
- (h) require the payment of costs associated with carrying out an order under this section.

(3) However, the power to make an order under subsection (1) does not extend to an order that requires the payment of compensation.

14E 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 trees are 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 14C.
- (2) The Court must not make an order under this Part unless it is satisfied that:
 - (a) the trees concerned:
 - (i) are severely obstructing sunlight to a window of a dwelling situated on the applicant's land, or
 - (ii) are severely obstructing a view from a dwelling situated on the applicant's land, and
 - (b) the severity and nature of the obstruction is such that the applicant's interest in having the obstruction removed, remedied or restrained outweighs any other matters that suggest the undesirability of disturbing or interfering with the trees by making an order under this Part.

14F 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 trees concerned in relation to the boundary of the land on which the trees are situated and the dwelling the subject of the application,
- (b) whether the trees existed prior to the dwelling the subject of the application (or

the window or part of the dwelling concerned where the dwelling has been altered or added to),

- (c) whether the trees grew to a height of 2.5 metres or more during the period that the applicant has owned (or occupied) the relevant land,
- (d) whether interference with the trees 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,
- (e) any other relevant development consent requirements or conditions relating to the applicant's land or the land on which the trees are situated,
- (f) whether the trees have any historical, cultural, social or scientific value,
- (g) any contribution of the trees to the local ecosystem and biodiversity,
- (h) any contribution of the trees to the natural landscape and scenic value of the land on which they are situated or the locality concerned,
- (i) the intrinsic value of the trees to public amenity,
- (j) any impact of the trees on soil stability, the water table or other natural features of the land or locality concerned,
- (k) the impact any pruning (including the maintenance of the trees at a certain height, width or shape) would have on the trees,
- (l) any contribution of the trees to privacy, landscaping, garden design, heritage values or protection from the sun, wind, noise, smells or smoke or the amenity of the land on which they are situated,
- (m) anything, other than the trees, that has contributed, or is contributing, to the obstruction,
- (n) any steps taken by the applicant or the owner of the land on which the trees are situated to prevent or rectify the obstruction,
- (o) the amount, and number of hours per day, of any sunlight that is lost as a result of the obstruction throughout the year and the time of the year during which the sunlight is lost,
- (p) whether the trees lose their leaves during certain times of the year and the portion of the year that the trees have less or no leaves,
- (q) the nature and extent of any view affected by the obstruction and the nature and extent of any remaining view,

- (r) the part of the dwelling the subject of the application from which a view is obstructed or to which sunlight is obstructed,
- (s) such other matters as the Court considers relevant in the circumstances of the case.

14G 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 trees if the consent or other authorisation of the relevant authority to interfere with the trees would be required, in the absence of section 6 (3), under the *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977*.

14H 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 (other than an order dismissing an application) to:

- (a) the council of the local government area in which the trees are situated, and
- (b) the Heritage Council if the Heritage Council appeared in the proceedings concerned under section 14G.

14I Review of Part

- (1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part 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 commencement of this Part.
- (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.

[12] Section 15 Failure to comply with order

Insert “or 2A” after “Part 2” in section 15 (1).

[13] Section 16 Successors in title bound by order

Insert after section 16 (1):

- (1A) If the Court makes an order under Part 2A requiring a person who is an owner of land on which 2 or more trees are situated (an **original trees owner**) to carry out work in relation to a tree or trees within a specified period and the original trees owner ceases to be the owner of the land before the work is carried out, the

immediate 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 trees owner (except as provided by this section).

[14] Section 16 (2)

Insert “, or the immediate successor in title of the applicant who is entitled to the benefit of the order under section 16A,” after “applicant for the order”.

[15] Section 16A

Insert after section 16:

16A Immediate successor in title to benefit from certain tree orders

If the Court makes an order under Part 2 in relation to a tree that has caused, or is causing, damage to the applicant’s property, or is likely to cause injury to any person, a person who is the immediate successor in title to the applicant is entitled to the same benefits and rights as the applicant in respect of the order.

[16] Section 17 Carrying out of work by local council

Insert “or 2A” after “Part 2” in section 17 (1) and (7) (d) (i) wherever occurring.

[17] Section 17 (8)

Omit the subsection. Insert instead:

(8) The council may recover, in a court of competent jurisdiction, the following from a person who is bound by an order under Part 2:

(a) the reasonable costs of carrying out work under this section,

(b) the amount prescribed by the regulations as the administrative cost for arranging the carrying out of work under this section.

[18] Section 17 (8) (as substituted by Schedule 1 [17])

Insert “or 2A” after “Part 2”.

[19] Section 17A

Insert after section 17:

17A Registration of judgment debt as charge on land

- (1) The council may, after obtaining an order of a court in proceedings against an owner of land for the recovery of costs in accordance with section 17 (8), apply to the Registrar-General for registration of the order in relation to that land.
- (2) An application under this section must define the land to which it relates.
- (3) The Registrar-General must, on application under this section and lodgment of the court order, register the order in relation to the land in such manner as the Registrar-General thinks fit.
- (4) There is created by force of this section, on the registration of the order, a charge on the land in relation to which the order is registered to secure the payment to the council of the amount payable under the order.
- (5) Such a charge ceases to have effect in relation to the land:
 - (a) if the council certifies in writing that the amount payable under the order has been paid to the council or that the council has otherwise agreed to the cancellation of the charge—on registration of the cancellation of the charge by the Registrar-General, or
 - (b) on the sale or other disposition of the property with the consent of the council, or
 - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,whichever first occurs.
- (6) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the order was registered and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every prior mortgage, lease or other interest recorded in the Register kept under that Act.
- (7) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (5).
- (8) If:
 - (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
 - (b) the charge is so registered,a person who purchases or otherwise acquires the land after the registration of

the charge is, for the purposes of subsection (5), taken to have notice of the charge.

- (9) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.
- (10) A council that makes an application under this section for registration of a court order may, by notice in writing, require the person against whom the order was made to pay all or any of the reasonable costs and expenses incurred by the council in respect of the registration of the court order. The council may recover any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.
- (11) In this section, a reference to an order of a court includes a reference to a judgment of a court.

Schedule 2 Amendment of other Acts and instrument

2.1 Dividing Fences Act 1991 No 72

Section 13A

Insert after section 13:

13A Jurisdiction of Land and Environment Court

- (1) The Land and Environment Court has jurisdiction to hear and determine matters arising under this Act in proceedings to which this section applies.
- (2) This section only applies if:
- (a) application for the exercise of the jurisdiction is made in relation to proceedings under section 7 of the *Trees (Disputes Between Neighbours) Act 2006* that have been commenced but not determined, and
 - (b) the tree that is the subject of those proceedings:
 - (i) has caused, is causing, or is likely in the near future to cause damage to a dividing fence, or
 - (ii) is part of a dividing fence and has caused, is causing, or is likely in the near future to cause damage to the applicant's property or is likely to cause injury to any person.
- (3) The Land and Environment Court may, of its own motion or on an application by a party to an application under this Act that is before the Local Court or a local land board, transfer the application that is pending in the Local Court or in a

local land board to the Land and Environment Court if:

- (a) the application is relevant to proceedings under section 7 of the *Trees (Disputes Between Neighbours) Act 2006* that have been commenced in the Land and Environment Court but have not been determined, and
 - (b) the tree that is the subject of those proceedings:
 - (i) has caused, is causing, or is likely in the near future to cause damage to a dividing fence, or
 - (ii) is part of a dividing fence and has caused, is causing, or is likely in the near future to cause damage to the applicant's property or is likely to cause injury to any person, and
 - (c) the Land and Environment Court is satisfied that there is sufficient reason for the application under this Act to be heard and determined by the Land and Environment Court.
- (4) An application that is transferred to the Land and Environment Court under subsection (3) is to be continued in the Land and Environment Court and determined by the Land and Environment Court as part of the related proceedings under section 7 of the *Trees (Disputes Between Neighbours) Act 2006*.
- (5) For the purposes of any proceedings to which this section applies, a reference to the Local Court in this Act (except sections 13 (2), (3) and (4) and 19 (2) and (3)) is taken to include a reference to the Land and Environment Court.

2.2 Land and Environment Court Act 1979 No 204

Section 18 Class 2—local government and miscellaneous appeals and applications

Insert "(including applications involving the exercise of jurisdiction under the *Dividing Fences Act 1991*)" after "*Trees (Disputes Between Neighbours) Act 2006*" in section 18 (g).

2.3 Native Vegetation Act 2003 No 103

Section 25 Legislative exclusions

Insert after section 25 (s):

- (t) any clearing carried out in accordance with an order under the *Trees (Disputes Between Neighbours) Act 2006*.

2.4 Trees (Disputes Between Neighbours) Regulation 2007

Clause 4 Prescribed plants

Omit “bamboo is prescribed”.

Insert instead “bamboo and any plant that is a vine are prescribed”.