

Trees (Disputes Between Neighbours) Amendment Act 2010 No 27

[2010-27]



New South Wales

Status Information

Currency of version

Repealed version for 27 May 2010 to 2 August 2010 (accessed 24 November 2024 at 17:37)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 3.8.2010.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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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[2]–[4] (Repealed)

[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], [10] (Repealed)

[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], [15] (Repealed)

[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] (Repealed)

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

Insert "or 2A" after "Part 2".

[19] (Repealed)

Schedule 2 (Repealed)