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Trees disputes between neighbours

The Trees (Disputes Between Neighbours) Act 2006 ("Act") established a simple, inexpensive and accessible process for resolving neighbour disputes about trees.

Previously these kinds of disputes could only be resolved in the Local, District or Supreme Court.

The *Act* establishes a new procedure in the *Land and Environment Court* ("Court") for resolving disputes about urban trees causing damage to property or risk of injury and permits the *Court* to make orders in relation to trees which have caused, are causing or are likely to cause damage to the applicant's property or which are likely to cause injury to a person.

It is the intention of the *Act* to ensure that wherever possible, people attempt to resolve these kinds of disputes without resorting to court action - for example through discussions with their neighbors or mediation.

The Trees (Disputes Between Neighbors) Amendment Bill 2010 ("Bill") amends the *Act* by giving the *Court* new jurisdiction to hear:

1. disputes about high hedges that severely block sunlight to a window of a dwelling on adjoining land, or views from such dwelling.

The object is to create a mechanism by which neighbour disputes about high hedges can be heard and disposed of in a proportionate way, which balances the competing rights of neighbours to enjoy their property and ensures that the existence and health of urban trees can be maintained.

This amendment does not apply to a single tree. It applies to groups of 2 or more trees that are planted to form a hedge and rise to a height of at least 2.5 m.

The *Court* will be able to make orders it sees fit to remedy, restrain or prevent the blocking of sunlight or views caused by the hedge.

2. At present the *Act* only applies to urban land such as land zoned residential. The *Bill* will also extend the operation of the *Act* to trees on land which is zoned Rural Residential.
3. The *Court* will also be able to deal with a tree that has caused, is causing or is likely to cause damage to a dividing fence or a tree that forms part of a dividing fence and has caused, is causing or is likely to cause damage to the applicant's property or is likely to cause injury to a person.
4. The *Bill* also makes changes to support the enforcement of court orders under the *Act* by:

Contacts

Jim Main
Brendan Cockerill
Margot Gill
Linda Alexander
Amanda Friend
John English

Call 1800 618 869
www.jmalegal.com.au

Canberra
L11/60 Marcus Clarke St,
Canberra ACT 2601
T 02 6243 3610
F 02 6243 4848

Cootamundra
46 Cooper St,
Cootamundra NSW 2590
T 02 6942 1655
F 02 6942 3692

Sydney
3 Spring St,
Sydney NSW 2000
T 02 8249 4028
F 02 8249 4872

- (a) Allowing councils, if they elect to enforce a court order for the applicant and then be able to recover a prescribed administration fee, in addition to the costs of carrying out the work to satisfy the order; and
- (b) Provides that any enforcement costs and fees payable to a Council may be registered as a charge on the tree owner's land.
- (c) Allows the applicant's immediate successor in title to enforce certain orders made under the *Act*.

Author: Margot Gill, JMA Legal June 2010
For further information on this issue, please see the contacts below.

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