

DISPUTES ABOUT PLANTS & TREES: Information Sheet

When it comes to trees and plants, what sorts of issues are commonly seen between neighbours?

The issues are varied, but the common sorts of matters are:

- (a) Tree branches overhanging into a neighbouring property. This can be a nuisance if it is dropping branches into your garden or causing a potential risk of branches dropping onto a structure such as a shed, garage or house.
- (b) There are circumstances where a neighbour's tree is severely obstructing light from reaching a window or solar panel.
- (c) At the more serious end of the spectrum, you may find a neighbour's tree has started to damage your property. This is commonly due to root systems damaging pipes or foundations of your home or other structures.

What is the law surrounding disputes about trees and plants?

Up until 1 December, 2017 disputes about plants and trees were not governed by any legislation. They were guided by common law principles (case law) which made it difficult and often unclear as to how the law sat regarding disputes about trees and plants, given each situation is factually unique.

Since 1 December, 2017 we have had a piece of legislation enacted known as the *Neighbourhood Disputes About Plants Act 2017* ("the Act"). It is designed to establish a cost effective, efficient, clear-cut way to resolve matters concerning trees and plants.

If tree branches are overhanging into a neighbour's property, what does the law say about that and what can people do to resolve this type of issue?

The first thing to note is that the Act protects your right to abate the nuisance. In simple terms, this means if your neighbour's tree or plant has branches overhanging into your property, you are within your rights to cut those branches back to the fence line and either dispose of the branches how you see fit, or if you want, you can in fact return them to the owner of the property the tree is on. Most people use this self-help option as it is simple, maintains neighbourly relations and maintains greenery in an urban environment. Thus, this is often the preferable and most common solution to these types of issues.

The situation becomes more difficult when you may not be able to cut the branches back yourself. In this case, you should firstly try and talk to your neighbour to see if they will agree to remove them for you. If they don't, then you need to consider some of the more formal remedies under the Act.

The simplest formal remedy is to serve the owner of the land on which the tree sits with a "*Branch Removal Notice*". This notice is available from the *Department of Justice* website to download and complete here:

https://www.justice.tas.gov.au/mediation_and_dispute_resolution/neighbourhood-disputes-about-plants. It is a formal demand that must be served on the owner of the land on which the tree or plant sits which compels them to comply with the request. It is however limited in its scope. It is only applicable where:

- (a) The branch you are seeking the owner of the tree to remove is less than 2.5m above ground level; and
- (b) The branch extends at least 50cm into your land.

Therefore, in a circumstance where you are seeking your neighbour to remove branches more than 2.5m into the air which overhang into your property more than 50cm, it does not apply.

What happens if you issue a Branch Removal Notice and the owner of the tree refuses to comply with it?

The *Branch Removal Notice* itself requires you to provide a quote from a professional to remove the branches in question. If the owner of the plant/tree fails to comply with it within the timeframe stipulated (usually 30 days) then you can go ahead and pay that tradesperson to undertake the job and then recover that money from the owner of the tree through the *Magistrates Court*, but only up to a \$500.00 limit.

What happens if the branches you require to be removed are more than 2.5m into the air? Is there a remedy under the Act?

This is one of the limitations with the Act, as it does not provide a method for resolving this type of dispute by way of a *Branch Removal Notice*.

Thankfully, the Act does provide a mechanism for ensuring a plant or tree does not cause (or is likely to cause in the next 12 months):

- (a) Serious injury to a person or another area of land;
- (b) Damage to land or property; or
- (c) Substantial, ongoing and unreasonable interference with the use and enjoyment of another area of land.

Therefore, when branches are high in the air and encroaching into another person's land and particularly over structures, you may be able to take action under this provision of the Act by issuing a Notice called a "*Notice about land affected by Plant*" providing you can satisfy the above criteria.

What is a "Notice about land affected by Plant" exactly and how does it differ from a "Branch Removal Notice"

The easiest way to think about it is that the simple removal of low-lying branches (less than 2.5m into the air and encroaching more than 50cm into your land) that are a mere nuisance is dealt with by issuing a "*Branch Removal Notice*".

When matters get more serious in circumstances where branches or a tree itself is likely to (or has) caused serious injury to person or property or is creating a substantial, ongoing and unreasonable interference with the use and enjoyment of the land, then you can issue a "*Notice about land affected by Plant*". This Notice is available on the *Department of Justice* website here: https://www.justice.tas.gov.au/mediation_and_dispute_resolution/neighbourhood-disputes-about-plants.

Unfortunately, if there are branches overhanging your property which are over 2.5m high and have not caused (or likely to cause in the next 12 months) serious injury or damage to property or substantial, ongoing and unreasonable interference with the use and enjoyment of another area of land, then you do not have recourse under the Act. In this scenario, you may choose to engage an arborist to remove the overhanging branches at your own expense by exercising your right to abate the nuisance or otherwise consider more traditional torts via the Common Law.

What happens if you serve a "Notice about land affected by Plant" on the owner of the land on which the tree sits and they fail to comply with that demand to remove the tree or its branches or rectify the issue generally?

This is where it becomes slightly more complex, and certainly more complex than a simple "*Branch Removal Notice*".

If the Notice is correctly issued, the time period passes (which must be no less than 14 days) and the owner of the tree does nothing to resolve the issue, then you can make application to the *Resource Management Planning & Appeals Tribunal* (now known as *TASCAT*) whereby they will decide whether or not to order the owner of the land on which the tree sits to comply with the remedy sought in your Notice.

In summary, the Tribunal has broad determinative grounds but must consider a number of factors, including but not limited to:

- (a) Whether adequate attempts have been made by the parties to resolve the dispute.
- (b) Risks associated with what is being sought as a solution.

- (c) Any relevant provisions under the planning scheme.
- (d) How long the affected landholder has known of the injury or damage;
- (e) The size of the land on which the plant is situated
- (f) Whether the plant existed before the applicant owned or occupied the affected land

and many other factors.

What can you do if a neighbour's tree is blocking sunlight to a window or solar panel?

In short, it depends. The process provided for under the Act is to issue a "Notice about land affected by Plant". This means you must be able to establish that the tree or plant is causing substantial, ongoing and unreasonable interference with the use and enjoyment of your land by virtue of the sunlight being severely obstructed from reaching:

- (a) a window (including a window in a door) of a building on the affected land; or
- (b) a solar photovoltaic panel, a solar collector for a solar hot water system, or a skylight, situated on a roof of a building on the affected land.

Should the owner of the plant/tree fail to comply with the Notice about land affected by Plant and the matter progresses to *TASCAT*, the same broad determinative grounds and considerations apply as described earlier in this Information Sheet.

Can anything be done if a plant/tree is blocking a view?

Once again, it depends on many factors.

The Act provides that a plant/tree may cause substantial, ongoing and unreasonable interference with the use and enjoyment by a person of affected land by virtue of causing a view from a dwelling on the affected land to be obstructed, but only if:

- (a) The plant is at least 2.5m high; and
- (b) The plant causes the view to be severely obstructed; and
- (c) The person is an owner of the land and the view from the dwelling was not so obstructed when the person took possession of the affected land.

Does the Act and associated Notices apply to all land and trees/plants?

No it does not. The Act does not apply to, or in relation to, a plant that is situated on:

- (a) Excluded Land (this includes: land owned or managed by a Council and used as a public park or garden, reserved land, land owned by the Forestry corporation, unalienated Crown Land, land situated on a rail network amongst others); or
- (b) A farm within the meaning of the *Primary Industry Activities Protection Act 1995*.

Further, the Act also excludes its application to plants that form a fence (these issues are dealt with pursuant to s48 of the *Boundary Fences Act 1908*).

Finally, the Act does not apply to plants that are planted or maintained:

- (i) For the Purpose of enabling the sale of the plant; or
- (ii) Under an order of a court or tribunal other than an order for the purposes of the Act.

How can the North West Community Legal Centre help?

We can assess the circumstances of your individual matter and provide you with your legal options under the Act as well as any other alternative remedies that may be available to you. Depending on your personal circumstances, you may be eligible for ongoing legal assistance whereby we can assist you through the process involved including completing the necessary Notices and Application to the Tribunal if required.

If you have any queries, please make an appointment to speak with one of our lawyers free of charge.

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