



## Trees

### **What can I do about a tree that encroaches onto my property?**

Disputes sometimes arise between neighbours about trees. Disputes often relate to intruding branches or roots, falling leaves, damage to pipes and dangerous trees.

### **Cutting and removing branches and roots**

You can cut overhanging branches or protruding roots back to the boundary of your land, however before you do this there are some important things to consider.

It is important you find out whether a tree preservation order (TPO) is in place in relation to a tree you want to prune, as there are significant penalties for breaching a TPO.

If the tree is not subject to a TPO, you can prune it but not by more than 10%. You may be held responsible for any damage caused to the tree in the process, so it is a good idea to get this work done by a professional.

If you need to access your neighbour's land in order to trim a tree, you should ask their permission to enter their land. If they refuse to give you access you can apply to the Local Court for an order granting access to your neighbour's land. You must give your neighbour 21 days notice of your intention to lodge the application with the Local Court.

It's also important to know that the owner of the

tree does not have to contribute to the costs of pruning it back to their boundary and any branches, roots or fruit which are removed from your neighbour's tree remain the property of your neighbour.

### **Falling leaves**

Neighbours are not responsible for removing leaves which fall onto their neighbour's property. In some very limited circumstances it may be possible to commence legal action against your neighbour about damage caused by falling leaves. It is important to get legal advice from a solicitor before commencing legal action.

### **Dangerous trees**

You cannot take action to remove a tree that is on your neighbour's property, even if it is diseased, damaged or in danger of falling.

In some circumstances the Council or the Rural Fire Brigade can require the removal of the tree.

If you believe a tree is dangerous you should write to your neighbour requesting that they take action to address the problem. You should keep a copy of this letter and if the tree causes damage to your property, use this letter to show that your neighbour was aware of the problem.

If your neighbour's trees or branches fall because they carelessly failed to address the dangerous situation, your neighbour could be liable for the damage.

## **Mediation**

As it is expensive to commence legal action in relation to trees, it is often a good idea to attempt mediation. Community Justice Centres (CJCs) may be able to assist you to come to an agreement. You can get information about CJCs at [www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au).

## **Land and Environment Court**

The Land and Environment Court can make orders in relation to trees on privately owned land in residential zones, but not rural residential zones. The Court can make orders if the tree might cause damage or injury. It cannot make orders regarding lopping trees or removing trees that block views.

If you are seeking a court order in regards to a tree located on your neighbour's property you must tell your neighbour and your local council about the application.

The Court cannot make orders unless it is satisfied that you have made a reasonable effort to resolve the matter with the owner of the tree.

The Court has broad powers to make orders to prevent damage to property or injury to any person.

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This factsheet is intended as a guide only and should not be used as a substitute for legal advice. The law as at June 2011.  
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