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TREE DISPUTES – A NEW LEGISLATIVE SCHEME

On 2 February 2007, the Trees (Disputes Between Neighbours) Act 2006 (NSW) commenced operation.

This Act has been designed to provide a simple, inexpensive and assessable process for the resolution of disputes between neighbours regarding trees on certain types of land.

The Act allows the specialist jurisdiction of the NSW Land and Environment Court to resolve these matters. The NSW Land and Environment Court is a specialist Court within the NSW Court system and is used for resolving planning and development disputes between neighbours, Councils and other parties.

Importantly, in respect of the trees to which the Act applies (the Act does not apply to trees on all sorts of land – see below), the Act removes the ability of a party to a dispute to institute proceedings for the common law

action of nuisance. These actions traditionally were commenced in the Local, District or Supreme Courts. Disputes in these Courts can be sometimes complex and lengthy and involve significant expense in legal costs.

The Act applies only to trees situated on land zoned residential, village, township, industrial or business under an environmental planning instrument, such as a Local Environment Plan. Importantly, this means that the Act does not apply to trees situated on lands zoned rural or rural-residential.

Section 7 of the Act provides that an owner of land may apply to the Land and Environment Court for an order to remedy, restrain or prevent damage to property on the land or to prevent injury to any person, as a consequence of a tree to which the Act applies that is situated on adjoining land.

Importantly, the Act provides land owners with an ability to seek

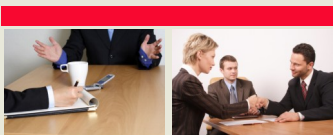


remedies for not only damage actually incurred to their property by trees, but also to apply to the Court to prevent such damage or to prevent injury to any person.

We believe that this new legislation is an important step forward in resolving disputes between neighbours regarding trees. These disputes are quite common.

The new Legislation means that there is a simple process for resolving disputes in respect of trees to which the Act applies and that no longer will actions also be commenced for private nuisance.

If you have any queries about the new legislation or wish to seek advice regarding a tree affecting your land or affecting the land of your neighbours, please contact us on 1300 727 813.



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