

## Overview

The *Neighbourhood Disputes about Plants Act 2017* (the Act) establishes a cost effective, efficient and accessible statutory scheme for the resolution of neighbourhood disputes relating to plants.

The Act outlines the responsibilities of landowners in respect to plants. These include:

- severing and removing any branches of the plant that overhang another area of land;
- ensuring that a plant does not cause serious injury to a person or another area of land;
- ensuring that a plant does not cause serious damage to another area of land or any property on land; and
- ensuring that a plant does not cause substantial, ongoing and unreasonable interference with the use and enjoyment of another area of land.

The Act outlines processes for neighbours to resolve issues or disputes that arise in relation to problem trees, hedges or other vegetation in a reasonable and amicable manner. Where such disputes may not be resolved amicably and in the absence of a satisfactory solution, an affected landholder may have redress under the scheme in the following circumstances:

- Where branches of the plant overhang the affected land; or
- Where the plant has caused, is causing or is likely within the next 12 months to cause, serious injury to a person on the affected land, serious damage to the affected land or property on that land, or substantial, ongoing and unreasonable interference with the use and enjoyment by a person of that land.

Substantial, ongoing and unreasonable interference with the use and enjoyment of land may include severe obstructions to views and sunlight.

The Act provides that those entities which are deemed to be land owners and who therefore may have responsibility for plants under the Act include:

- persons who are entitled to freehold possession;
- life tenants;
- some lease and licence holders;
- the Minister or authority that is responsible for Crown land in some cases; and
- persons who hold a prescribed interest in the land.

The Act does not apply to plants that are situated on land that is defined as excluded land. This includes:

- public parks and gardens, reserves, conservation areas and public open space that is owned or managed by local councils;
- rail network land;
- strategic infrastructure corridors;
- land that is located within Wellington Park;
- state highway and local highway land;
- unalienated Crown Land

- reserved land under the *Nature Conservation Act*, this includes national parks and other reserves;
- land that is reserved under the *Crown Lands Act* or reserved for a public purpose under another Act;
- land that is owned by the Forestry Corporation, permanent timber production zones or some other timber production land; and
- other land that is prescribed.

The Act also does not apply to:

- plants that are situated on a farm within the meaning of the *Primary Industry Activities Protection Act 1995*, if the plant is planted or maintained for a purpose that is necessary or desirable for the management or operation of the farm;
- a plant that forms a fence in relation to which a notice may be issued under section 48 of the *Boundary Fences Act 1908*; and
- plants planted or maintained for the purpose of enabling the sale of the plant or under an order of a court or tribunal other than an order for the purposes of the Act.

### **Informal Dispute Resolution**

Under the Act, parties are first required to make reasonable attempts to resolve a plant dispute informally.

Where possible, parties are encouraged to resolve matters informally and the affected landholder may request the plant owner, either verbally or in writing, to take action to ensure the affected land is no longer affected.

However if the matter is not able to be resolved through this process, the affected landholder may give the plant owner a notice. The two main notices under the Act are a branch removal notice and a notice about land affected by plant. It is recommended that affected parties use the template notice forms for these notices.

### **Branch Removal Notice**

A landholder of affected land may give a branch removal notice to a plant owner if a branch from a plant –

- (a) is 2.5 metres or less above the ground level of the affected land; and
- (b) extends at least 50 centimetres from the boundary of the affected land with the other land.

The branch removal notice must:

- (a) specify a day by which the plant owner needs to remove the branch from the affected landholder's property (but this must be a date that is at least 30 days from the day on which the notice is given to the plant owner); and
- (b) ask the plant owner to give to the affected landholder a notice specifying the name of the person who will enter the affected land and sever and remove the branches and the day on which that person will do the work; and

- (c) give the plant owner and any person acting on the plant owner's behalf, permission to enter the affected land between 8am and 5pm on a day nominated by the plant owner in the notice given by the plant owner to sever and remove the branches; and
- (d) be accompanied by at least one written quotation stating the estimated cost of removal (unless both parties agree that branches can be removed without payment being made to another person); and
- (e) be accompanied by a copy of Part 3 of the Act.

A plant owner may give a notice in writing (response to branch removal notice) to the affected landholder specifying:

- (a) the name of the person who will enter the affected land and sever and remove the branches; and
- (b) the day on which the person will enter the land; and
- (c) the notice must be given at least 24 hours before the branches are to be removed.

A permission in a notice to enter affected land does not include:

- (a) permission to enter any dwelling situated on the affected land; or
- (b) permission for a person who is not suitably qualified to carry out work on the land, unless agreed by the parties.

A second notice may not be given to the owner of the same plant within a 12 month period, unless the owner has changed.

#### Action that may be taken if branch removal notice is not complied with

If the plant owner does not remove the overhanging branches on the specified date, the affected landholder may sever and remove the branches and may, but is not required to, return the branches to the plant owner. However, the affected landholder is not authorised to enter the plant owner's land to remove the branches.

The plant owner is liable for the reasonable expenses of the affected landholder in severing and removing the tree branches or arranging for another person to sever and remove them, but only to an amount that is not more than the prescribed maximum amount, this is currently \$500.

The affected landholder may recover the amount from the plant owner. The plant owner may apply to a magistrate to determine if the expenses that are sought to be recovered by the affected landholder are fair and reasonable, and the magistrate may determine another amount.

#### **Notice about land affected by plant where branch removal notice cannot be issued**

A landholder who is affected by a plant that is situated on another area of land may give notice in writing to the owner of the other land. The notice about land affected by plant is to specify the grounds on which the affected landholder believes the land is being affected, specify the action that should be taken by the owner and request the owner of the land to respond in writing within a period (of not less than 14 days), specified in the notice.

## **Insurance**

It is the land owner's responsibility to consider public liability insurance before giving a person permission to enter his or her land.

It is the land owner's responsibility to consider a contractor's insurance before engaging a contractor to carry out work on a plant.

The Act also recognises that informal disputes resolution may not always be possible and sets out a range of circumstances that may be considered by the Resource Management and Planning Appeal Tribunal. For example, if threats of violence have previously been made, where restraint orders are in place or where parties have already participated in alternative dispute resolution.

## **Formal Dispute Resolution**

### **Applications to Resource Management and Planning Appeal Tribunal**

If disputes are unable to be resolved by informal dispute resolution, the Tribunal has jurisdiction to hear and determine disputes. Further information and practice directions issued by the Tribunal will be available on commencement of the scheme at [www.rmpat.tas.gov.au](http://www.rmpat.tas.gov.au).

### **Fees**

The application fee for seeking orders from the Tribunal in relation to affected land is \$322.40.

The fee to search the Tribunal data base for orders and applications is \$23.25.

## **Responsibilities where sale or proposed sale of land**

### **Person selling land to give buyer copy of application or order and to notify Tribunal**

Section 16 of the Act requires an owner seller of land to give a copy of any application and any additional information filed with the Tribunal, or a copy of an order to a prospective purchaser before entering into a contract of sale for the land. If the seller fails to do this without reasonable excuse, he or she commits an offence and may be liable to a penalty.

A person selling land to give buyer copy of application or order template form will be available on commencement of the scheme at [www.justice.tas.gov.au](http://www.justice.tas.gov.au).

It is also an offence if the owner seller of the land fails to notify the Tribunal as soon as practicable after a contract of sale is entered into, that the prospective purchaser is joined as a party to the application.

A notice of additional party template form will be available on commencement of the scheme at [www.justice.tas.gov.au](http://www.justice.tas.gov.au).

**Consequences before transfer of failure to give copy of application or order to prospective purchaser**

Section 17 of the Act provides that if a prospective purchaser of land is not given a copy of an application or order before entering into a contract of sale for the land, the prospective purchaser may terminate the contract of sale before settlement by giving a notice to the owner or the owner's agent.

A [notice of termination](http://www.justice.tas.gov.au) template form will be available on commencement of the scheme at [www.justice.tas.gov.au](http://www.justice.tas.gov.au).

If the contract of sale is terminated, the owner must refund the deposit to the prospective purchaser within 14 days. It may be an offence if the owner fails to do so.

If the person who holds the deposit fails to refund the deposit to the prospective purchaser immediately after being directed by the owner to do so, the holder of the deposit may commit an offence.

If a contract of sale is terminated by the prospective purchaser, the owner seller of the land and the person who was acting for the owner who prepared the contract of sale, if there is one, may be jointly and severally liable to the prospective purchaser for reasonable legal and other expenses incurred by that person after that person signed the contract of sale.

However, if the owner of land or person who prepared the contract did not know or ought not reasonably be expected to know that the owner was given a copy of an application or order, that person will not be liable for the reasonable legal and other expenses incurred by the prospective purchaser.

**Consequences after transfer of failure to give copy of order to prospective purchaser**

An owner who sells land and who at the time of settlement has not carried out work that is required to be carried out by an order, is liable to carry out any outstanding work if the owner did not give the prospective purchaser a copy of the order before the parties entered into the contract of sale.

An owner of the land must not restrict the person from ensuring the work is carried out.