Leaf Me Alone: Tree Disputes Between Neighbours

Trees are a frequent source of disputes between neighbours. They can provide privacy and enhance amenity, but they can also annoy neighbours and damage their property. This often leads to disputes, generally involving a person wanting a tree removed or pruned and the neighbour on whose land it stands refusing to do so.

There are several methods by which such disputes can be resolved:

- Negotiation with the neighbour, where possible always the best option.
- The historic method, which retains some relevance today, involves common law rights under the laws of nuisance and trespass. Key points:
    - A nuisance action, which essentially involves a claim that another landowner is allowing a scenario, in this case a troublesome tree, which represents a substantial and unreasonable interference with the claimant's land or his use or enjoyment of that land. The Trees (Disputes Between Neighbours) Act 2006 ("Act") precludes such an action in relation to trees to which the Act applies. However, the Act does not apply to all trees, e.g. trees on council land or trees on land with certain non residential zonings, so there will be situations where a nuisance action is appropriate. Also, although a 2017 NSW Court of Appeal case has confirmed that common law nuisance actions are available against strata owners corporations, they won't be available where the cause of the nuisance is a troublesome tree, because of the preclusion under the Act.
    - The law of trespass provides a range of "self-help" remedies, which may assist with overhanging branches or root intrusion, as those constitute a trespass. However, a mix of legal and practical consideration suggest the need for caution in relying on such remedies. In particular:
        - Such action will be subject to any restrictions under planning laws, especially under council tree preservation orders. Care needs to be taken not to breach these, as penalties can be substantial. If more than a specified portion of the canopy is to be removed, approval may be required and it can be difficult to obtain without a good reason, e.g. where the tree is a pest species or dangerous.
        - Such action can escalate disputes between neighbours and possibly prevent a negotiated solution. At the least, the person doing the pruning should let the owner of the tree know what is proposed.

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- The rights available are quite limited. One is limited to removal of overhanging branches and intruding roots, to the extent that they cross the property boundary and can be removed without entering the adjoining property (which would itself be a trespass). Also, the tree must not be damaged or rendered unstable. It is permissible to install root barriers along the boundary.

- Technically, the pruned branches and roots remain the property of the owner of the tree, but there is no obligation to return them and throwing them over the fence would constitute a trespass, suggesting that the person doing the pruning should offer to return them and if unwanted use their green bin to dispose of them.

- The newer method, where available, is an action in the Land & Environment Court of NSW ("Court") under the Act. Key points:

    - The Act has broad but not universal application. For example, it does not apply to trees on rural or council land. However, it is not limited to trees and extends to a "woody perennial plant", e.g. bamboo and hedges.

    - A tree on the boundary is considered to be on the property on which it is "situated wholly or principally".

    - The Act permits the Court to make a wide range of orders, including orders for removal, pruning (including on an ongoing basis) and compensation. These can override Council tree preservation orders. These orders can be based on various grounds, including mitigation of risk of injury or property damage and obstruction of sunlight or views. Whether the Court will actually make such orders depends on circumstance and the Court has established guidelines for that purpose.

Key takeaways

- Trees can enhance privacy but may also lead to disputes between neighbours.
- Negotiation is often the best method for resolving tree disputes.
- The Trees (Disputes Between Neighbours) Act 2006 provides specific legal frameworks for tree disputes.
- Common law rights under nuisance and trespass may still apply in certain situations.
- Legal remedies for tree disputes are limited and should be approached with caution.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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