

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to enable the bringing of proceedings in the Land and Environment Court (the Court) to resolve disputes between neighbours about trees in urban areas. In particular, the Bill enables an owner of land to apply to the Court for an order to remedy, restrain or prevent damage to the owner's property, or to prevent injury, as a consequence of a tree situated on adjoining land.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 provides that the proposed Act applies only in relation to trees situated on land within residential, business and certain other urban zones under environmental planning instruments made under the Environmental Planning and Assessment Act 1979. Clause 4 also provides that the proposed Act does not apply to trees situated on land vested in, or managed by, a local council, and for the regulations to extend or exclude the land to which the proposed Act applies.

Clause 5 abolishes the right that a person may otherwise have to bring any court action in nuisance as a result of damage caused by a tree to which the proposed Act applies.

Clause 6 makes it clear that an order of the Court under proposed Part 2 does not generally enable a person to carry out any work, or engage in any activity, for which a consent or other authorisation is required under another Act or that is prohibited under another Act. However, an order under proposed Part 2 is to have effect despite any requirement that would otherwise apply for a consent or other authorisation to be obtained in relation to the tree concerned under the Environmental Planning and Assessment Act 1979 or the Heritage Act 1977. A local council or the Heritage Council (a relevant authority) may appear in proceedings brought under the proposed Act if such an authorisation of the relevant authority would otherwise be required. (See clause 13.)

Part 2 Court orders

Clause 7 enables an owner of land to apply to the 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 situated on adjoining land.

Clause 8 provides that an applicant for any such order must notify certain persons, including the owner of the tree concerned and any relevant authority who would be entitled to appear, under proposed section 13, in proceedings relating to the tree. The Court may direct that other persons be notified. The Court may also waive the requirement to give notice.

Clause 9 confers a discretion on the Court to make such orders as it thinks fit to remedy, restrain or prevent damage to property, or to prevent injury to any person, as a consequence of the tree concerned. The clause provides a range of examples of orders that the Court may make.

Clause 10 provides, among other things, that the Court must not make an order under proposed Part 2 unless it is satisfied that the applicant has made a reasonable effort to reach agreement with the owner of the tree concerned and that the notification requirements set out in proposed section 8 have been complied with. Clause 10 also provides that the Court must not make such an order unless it is satisfied that the tree concerned:

- (a) has caused, is causing, or is likely in the near future to cause, damage to the applicant's property, or
- (b) is likely to cause injury to any person.

Clause 11 provides that, if the tree concerned is on Crown land and the matter has been referred to a local land board under the Crown Lands Act 1989 or the Western Lands Act 1901, the Court must not make an order under proposed Part 2 unless the local land board has completed or made its inquiry, report or recommendation and the applicant has been advised of any related decision by the Minister for Lands or Minister for Natural Resources.

Clause 12 requires the Court to consider a range of matters before determining an application made under the proposed Act.

Clause 14 provides that the Court must provide a copy of any order it makes under proposed Part 2 to the council of the local government area in which the tree is situated and to the Heritage Council (if the Heritage Council appeared in the proceedings concerned under proposed section 13).

Part 3 Enforcement of orders

Clause 15 makes it an offence for a person to fail to comply with any requirement imposed on the person by an order under proposed Part 2. The maximum penalty for such an offence will be 1,000 penalty units (currently, \$110,000).

Clause 16 provides that an order under proposed Part 2 that requires an owner of land to carry out work in relation to a tree situated on the land binds any successor in title to the owner who is given notice of the order.

Clause 17 empowers a local council to enter land for the purpose of carrying out work relating to a tree situated on the land if the owner of the land has failed to carry out the work, within a specified period, in accordance with an order made under proposed Part 2. This clause also allows the council to recover in a court of competent jurisdiction the reasonable costs of carrying out such work.

Part 4 Miscellaneous

Clause 18 makes it clear that, except for the abolition (under proposed section 5) of rights to bring actions in nuisance relating to damage caused by trees to which the proposed Act applies, the proposed Act does not affect the rights that a person has under any other Act or law to interfere with a tree that is not owned by the person.

Clause 19 provides that the proposed Act binds the Crown.

Clause 20 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 21 is a formal provision that gives effect to the provisions set out in Schedule 1.

Clause 22 is a formal provision that gives effect to the amendments to the Land and Environment Court Act 1979 and the regulations set out in Schedule 2.

Clause 23 provides for the review of the proposed Act within 2 years from the date of assent to the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains provisions enabling the Governor to make regulations of a savings or transitional nature. Schedule 1 also contains a clause that provides that proposed section 5, which abolishes rights to bring actions in nuisance relating to damage caused by trees to which the proposed Act applies, does not apply in respect of any proceedings commenced in a court before the commencement of that proposed section.

Schedule 2 Amendment of other legislation

Schedule 2 amends the Land and Environment Court Act 1979, Conveyancing (Sale of Land) Regulation 2005 and Environmental Planning and Assessment Regulation 2000 as set out in the Schedule.