

As you may be aware, for the past two years, the Land and Environment Court of New South Wales has exercised a specialist jurisdiction concerning trees. This jurisdiction was given to the Court as a consequence of the passage of the *Trees (Disputes Between Neighbours) Act 2006*. The Court, in its broader environmental jurisdiction, also occasionally deals with cases involving trees in merit reviews of development application appeals. We also have a significant criminal jurisdiction concerning breaches of native vegetation and threatened species protection legislation as well as concerning breaches of Council tree preservation orders.

The Court has heard and determined over 250 cases concerning trees disputes between neighbours in the past two years. As you may be aware, the Court has two Acting Commissioners, Judy Fakes and Peter Thyer, who are arborists. One or other of them has been involved in virtually all of these tree cases.

At the time the Trees Act was passed, the government promised to undertake a review of how the Act had worked two years after the Act came into force. That review is now taking place.

As part of the Court developing its own submission to the government's review, I have also reviewed how we can better communicate, from time to time, what we do when we deal with tree and vegetation issues. Although the Court publishes an extensive plain English practice collection concerning the Trees Act, on the Court's website, accessing this information is essentially passive (in the sense that a person must be interested in the topic and seek out the information).

As one result of our internal review, I have decided that we should explore ways of more proactively sending information to potentially interested individuals and organisations.

I have, therefore, decided to set up an experimental method of communicating tree information.

Initially, I propose that the Court will e-mail to organisations who may be interested in this aspect of the Court's work so that those organisations can pass the information on to their members if they wish to do so. At the present time, we are not in a position to provide a broader distribution of the information (although this may change over time if there appears to be a demand for this).

To start the process, I provide, below, links to a range of material which may be of interest.

- My decision in [Robson v Leischke](#) [2008] NSWLEC 152 (2008); 159 LGERA 280, a compensation case under the Trees Act where I took the opportunity to analyse the past legal history concerning trees and the law of nuisance; the development of the Trees Act; and the way the Trees Act operates;

- [Director-General of the Department of Environment and Climate Change v Hudson](#) [2009] NSWLEC 4, a recent criminal decision by Lloyd J concerning broadacre clearing of native vegetation where fines totalling \$408,000 were imposed;
- [Mackenzie v Ku-ring-gai Council](#) [2008] NSWLEC 1525 – although a decision given some six months or so ago, this case concerned a development application where the single issue involved was impact on a significant tree and where the outcome resulted in greater protection for the tree;
- The Court's [Trees Act practice collection's opening page](#) which contains links to useful information and documents; and.
- An [annotated version of the Trees Act](#) which the Court has published. By providing a commentary on the various provisions of the Act and hot links to cases (which are examples of the way from the Court has decided on various issues), this document provides a practitioner's guide, not merely for lawyers but also for arborists and allied professionals, on how we are dealing with and implementing this aspect of the Court's jurisdiction.

I expect that there will be further tree-related decisions given by the Court in the near future (and on an ongoing basis, from time to time) that may be of interest. There may also be other relevant material we publish on the Court's web site about which we notify you.

Unless we hear from you to the contrary, we will continue to forward this material, as it arises, for information.

**Justice Brian J Preston**  
Chief Judge

10 March 2009