

Neighbourhood Support New Zealand



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Neighbourhood Support Fact Sheet

Neighbours and Trees

This fact sheet deals with the rights and obligations that adjoining neighbours have in relation to trees grown on their property. While it is useful to know the law, it is always better if neighbours can talk to each other and attempt to resolve problems amicably.

Where trees on one property cause a nuisance and interfere with a neighbour's right to enjoy their land, legal remedies may be available to compensate or rectify the problem.

In the case of *Khyatt v Morgan*, Mrs Khyatt claimed for damage caused by a neighbour's pohutukawa trees encroaching onto her property. The roots from these trees damaged a concrete wall and cracked sewerage pipes on her property. This case went all the way to the Privy Council where an order to pay compensation and to cut down the offending trees to stop further damage occurring, was confirmed.

It is possible to seek compensation in the [Disputes Tribunal](#) for damage caused by trees, where the amount claimed is less than \$7,500.

Where, for example, it can be proved that roots from a neighbour's tree have blocked or caused damage to drains, the repair costs can be recovered in the Disputes Tribunal, provided the claimant can prove the damage was caused by the neighbour's trees.

Where roots encroach or branches overhang onto a neighbour's property, the law also allows a "self help" remedy to put right the nuisance caused. The neighbour can cut off the encroaching roots or branches at the boundary, in order to "abate" the nuisance caused by the tree. Any branches that are cut off must however be returned to the neighbour, as they remain the property of the person that owns the tree.

Where trees are grown on a common boundary, they may constitute a "live fence" for the purposes of the **Fencing Act 1978**. Subject to the provisions of the Fencing Act, adjoining neighbours are required to contribute equally to the cost of maintaining this type of fence. Neighbours should however attempt to come to some agreement before taking any action under this legislation. (see the fact sheet on [Fences and Neighbours](#))

Common law did not recognise any right to a particular view from a property. There was no remedy available where trees obstructed a view until Parliament enacted section 129C of the **Property Law Act 1952**. This provision gives a **District Court Judge** the power to order an occupier of land to remove or trim trees on their property where the trees either:

- obstruct a view,

- present a real threat of damage to life or property, or
- diminish the value of the neighbours property or their enjoyment for residential purposes.

In any application under section 129C, the Judge will balance the hardship caused to the applicant if an order to cut down the tree is not made, against the hardship the tree owner will suffer, if the order is made. In weighing up these competing interests the Judge will also consider any environmental, social or cultural benefits the tree might have. This type of action must be heard before a District Court Judge and cannot be brought in the Disputes Tribunal.

There are extensive powers given to local authorities to take necessary corrective action where trees encroach onto public land. Section 133 of the **Public Works Act 1981** allows for the removal of trees that obscure visibility or interfere with public works. Section 355 of the **Local Government Act 1974** gives councils the power to require removal or trimming of trees "overhanging or overshadowing the road" where this is necessary to prevent obstruction or danger to traffic or damage to a road, channel ditch or drain.

More information on the Fencing Act or the Disputes Tribunal is available from [Community Law Centres](#)
[Citizens Advice Bureau](#)
[Disputes Tribunal](#).

[New Zealand legislation](#) can be located at this address under Statutes.