

APPENDIX 48.2

- (3) Section 16 does not apply to a ship while it is at sea.
- (4) To avoid doubt, where this Act applies outside New Zealand, the provisions relating to offences apply even though an act or omission that constitutes an offence occurred in respect of a ship outside New Zealand.

Sections 3A to 3F were inserted, as from 5 May 2003, by section 6 Health and Safety in Employment Amendment Act 2002 (2002 No 86). See section 31 of that Act as to the general transitional provision.

3C Application of certain provisions to volunteers doing regular work

- (1) This section applies if—
 - (a) a volunteer does work for another person (being an employer or self-employed person) with the knowledge or consent of the other person; and
 - (b) the volunteer does the work on an ongoing and regular basis for that other person; and
 - (c) the work is an integral part of the business of the employer or self-employed person.
- (2) When this section applies, sections 6 to 12, 19, and Part 4 apply with all necessary modifications,—
 - (a) as if the volunteer were an employee of the other person; and
 - (b) as if the other person were the volunteer's employer; and
 - (c) as if the volunteer were at work when doing work for the other person.
- (3) This section does not apply in respect of a volunteer doing any of the following voluntary work activities:
 - (a) participation in a fundraising activity; or
 - (b) assistance with sports or recreation for—
 - (i) a sports club;
 - (ii) a recreation club;
 - (iii) an educational institution; or
 - (c) assistance with activities for an educational institution outside the premises of the educational institution; or
 - (d) providing care for another person in the volunteer's home.

Sections 3A to 3F were inserted, as from 5 May 2003, by section 6 Health and Safety in Employment Amendment Act 2002 (2002 No 86). See section 31 of that Act as to the general transitional provision.

3D Protections for other volunteers

- (1) This section applies in respect of all volunteers doing any voluntary work activity in respect of whom section 3C does not apply.
- (2) The person for whom such a volunteer does the work activity should take all practicable steps to ensure the health and safety of the volunteer while he or she is doing the work activity, in particular by taking hazards into account when planning the work activity.
- (3) If an inspector becomes aware of a significant hazard relating to the work activity, the inspector must, as soon as practicable, contact the person for whom the volunteer is doing the work activity (or the person's representative) to discuss means of eliminating, isolating, or minimising the hazard.
- (4) If this section applies, sections 39, 41, and 49 do not apply.

Sections 3A to 3F were inserted, as from 5 May 2003, by section 6 Health and Safety in Employment Amendment Act 2002 (2002 No 86). See section 31 of that Act as to the general transitional provision.

3E Application of Act to persons receiving on the job training or gaining work experience

- (1) This Act, except for Part 2A, applies when a person who is not an employee is in a place of work for the purpose of receiving on the job training or gaining work experience (**person A**).
- (2) For the purposes of this Act,—
 - (a) person A must be treated as if he or she were an employee of the person who has agreed to provide the on the job training or work experience (**person B**); and
 - (b) person B must be treated as if that person were person A's employer; and
 - (c) person A must be treated as if he or she were at work when in the place of work for the purposes set out in subsection (1).

Sections 3A to 3F were inserted, as from 5 May 2003, by section 6 Health and Safety in Employment Amendment Act 2002 (2002 No 86). See section 31 of that Act as to the general transitional provision.



**VOLUNTEER
HEALTH AND SAFETY INDUCTION FORM**

*To be completed by the SDC Representative & Volunteer before commencing work
A copy to be given to volunteer and SDC Health and Safety Coordinator*

VOLUNTEER'S NAME _____

CONTACT DETAILS _____

SDC/COMMITTEE REPRESENTATIVE NAME & CONTACT DETAILS

START DATE _____

LOCATION & DESCRIPTION OF WORK _____

If SELWYN DISTRICT COUNCIL identifies or SDC Representative is aware of any significant hazards on the premises or work sites please list these below e.g. Asbestos, slippery surfaces, toxic chemicals.

List Hazards and Control Measures:

PROTECTIVE CLOTHING/EQUIPMENT REQUIRED

ACCIDENT REPORTING
(See overleaf)

☐

FIRE PRECAUTIONS
(See overleaf)

☐

EMERGENCY PROCEDURES

☐

All items on this form have been explained or shown to me (tick boxes above) and I am aware of hazards in the work place and the methods in place to control these hazards.

VOLUNTEER

SDC REPRESENTATIVE

Signed _____
____/____/____

____/____/____

Return completed and signed form to:
Health and Safety Contractor Co-ordinator - Katherine Haynes,
Selwyn District Council, PO Box 90 ROLLESTON 7643

Telephone 03 347 2891

VOLUNTEER HEALTH AND SAFETY INDUCTION FORM

FIRE PRECAUTIONS

1. Procedure in event of fire

All volunteers should know the location of:

- Fire extinguishing equipment
- Alarm call points
- Telephones from which the fire brigade can be called
- Escape routes and fire exits

2. Fire protection equipment

- Any damage should be reported immediately to the fire safety officer
- Easy access should be left to extinguishers, hose reels and hydrants.

3. Means of escape and fire brigade access

- Doorways and corridors should not be obstructed.

4. Smoking

- No smoking areas should be observed.

5. Heating

- No portable or mobile space heaters should be used without the express permission of the fire safety officer.

6. Electrical equipment

- Wiring should be installed to IEE Regulations by a qualified electrician.
- All equipment should be unplugged when not in use.

7. Flammable liquids

- Only the quantity necessary for one day's work should be kept in the workplace. Reserve stocks stored as directed by the fire safety officer.
- Highly flammable liquids (flash point below 32°C) require a hot work permit.

8. Gas Cylinders

- Only the cylinder in use should be kept in the workplace. Reserve and empty cylinders stored as directed by the fire safety officer.

9. Waste and Rubbish

- Should be cleaned up daily.

10. Other i.e. Rural Fire Permit Required

*Special precautions – Hot work permits. No operation involving highly flammable liquids, flame, hot air or arc welding and cutting equipment, brazing and soldering equipment, blow lamps, bitumen boilers or other equipment producing heat or having naked flames should be begun without first obtaining a *hot work permit*.

ACCIDENT REPORTING

An Accident/Incident form is to be completed for all accidents/incidents and is available from www.selwyn.govt.nz/council-info/community/contractor-information or Selwyn District Council Headquarters, 2 Norman Kirk Drive Rolleston PH 347 2891

Return completed and signed form to:

Health and Safety Contractor Co-ordinator - Katherine Kayne²³
Selwyn District Council, PO Box 90 ROLLESTON 7643

Telephone 03 347 2891

APPENDIX 48.3

Help us improve our site and you could win a \$100 book voucher. Take the survey

New Zealand Legislation: Acts

Acts are laws made by Parliament

newzealand.govt.nz



[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

Property Law Act 2007 No 91 (as at 25 September 2008), Public Act

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

Act by section

[Contents](#) > [Part 6 Special powers of court](#) >

Subpart 4—Trees and unauthorised improvements on neighbouring land

338 Completion of work required by order under section 333

- (1) The work necessary to carry out an order made under [section 333](#) must be completed within—
 - (a) 20 working days after the date of the making of the order; or
 - (b) a later time specified in the order or subsequently allowed by the court for the completion of the work.
- (2) However, the order may specify that a tree must be kept trimmed, or that a structure to which this subpart applies must be kept in good repair, or that any other work required to be done to eliminate or reduce the risk, obstruction, or interference complained of must be done—
 - (a) as often as is necessary; or
 - (b) at intervals specified in the order.
- (3) Despite subsection (2), a person who is subject to an order of the kind referred to in that subsection may apply to the court for the order to be varied if there has been a change in the circumstances that, had the change occurred before the making of that order, could reasonably be expected to have resulted in the order being different from the one that was made.
- (4) The court may, on an application made under subsection (3), vary the order to reflect the change in circumstances that has occurred since the order was made.
- (5) If the order is not duly complied with within the time specified in this section or in the order, or subsequently allowed by the court, the applicant, with the agreement of the defendant or with the leave of the court, may, in person, or through the applicant's employees, agents, or contractors, enter onto the defendant's land and carry out any work necessary to give effect to the order.
- (6) If work is done by or through the applicant under subsection (5), then, unless the parties otherwise agree or the court otherwise orders, the applicant is entitled to recover from the defendant the whole of the reasonable cost of the work necessary to give effect to the order.
- (7) In granting leave to an applicant under subsection (5), the court may impose any conditions it thinks fit in relation to—
 - (a) the time by which, and the manner in which, any work necessary to give effect to the order must be carried out;
 - (b) security or indemnity against any expenses or damage;
 - (c) the avoidance or making good of any injury or damage;
 - (d) the disposal of all or part of any tree or structure;
 - (e) any other relevant matters.

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

Help us improve our site and you could win a \$100 book voucher. Take the survey

New Zealand Legislation: Acts

Acts are laws made by Parliament

newzealand.govt.nz



[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

Property Law Act 2007 No 91 (as at 25 September 2008), Public Act

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

Act by section

Contents > Part 6 Special powers of court >

Subpart 4—Trees and unauthorised improvements on neighbouring land

337 Court may impose conditions in making order under section 333

- (1) In making an order under [section 333](#), the court may impose any conditions it thinks fit, including conditions for either or both of the following:
- (a) requiring the defendant to make good, or pay compensation to the applicant for, any damage caused to the land of the applicant or any property on that land, in the course of removing or trimming any tree ordered to be removed or trimmed, or the doing of any other work required to be done to eliminate or reduce the risk, obstruction, or interference complained of;
 - (b) requiring the applicant or the defendant, or both of them, to give security for any expenses or damage.
- (2) The reasonable cost of any work necessary to give effect to an order made under [section 333](#) must be met by the applicant, unless the court—
- (a) is satisfied, having regard to the conduct of the defendant, that it is just and equitable to require the defendant to pay the whole or any specified share of the cost of the work; and
 - (b) gives a direction as a condition of the order accordingly.
- (3) Subsection (2) is subject to [section 338\(6\)](#).
- Compare: 1952 No 51 [s 129C](#)

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

Help us improve our site and you could win a \$100 book voucher. Take the survey

New Zealand Legislation: Acts

Acts are laws made by Parliament

newzealand.govt.nz



[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) |
[About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

Property Law Act 2007 No 91 (as at 25 September 2008), Public Act

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

Act by section

[Contents](#) > [Part 6 Special powers of court](#) >

Subpart 4—Trees and unauthorised improvements on neighbouring land

333 Court may order removal or trimming of trees or removal or alteration of structures

- (1) A court may, on an application under [section 334](#), order an owner or occupier of land on which a structure is erected or a tree is growing or standing—
- (a) to remove, repair, or alter the structure; or
 - (b) to remove or trim the tree.
- (2) An order may be made under subsection (1) whether or not the risk, obstruction, or interference that the structure or tree is causing—
- (a) constitutes a legal nuisance; and
 - (b) could be the subject of a proceeding otherwise than under this section.
- (3) Subsection (4) applies if—
- (a) the applicant's land may be used for residential purposes under rules in the relevant proposed or operative district plan; and
 - (b) the application is made in relation to the use or enjoyment of the land for those purposes; but
 - (c) no building intended for residential purposes has been erected on the land.
- (4) The court may not make an order under subsection (1) unless satisfied that the building will be erected on the land within a reasonable time and, if the court makes the order,—
- (a) the order does not take effect unless and until the building is erected; and
 - (b) if the building is not erected within a reasonable time, the order may be vacated on the application of any interested person.

Compare: 1952 No 51 [s 129C](#)

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) |
[About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

Help us improve our site and you could win a \$100 book voucher. Take the survey

New Zealand Legislation: Acts

Acts are laws made by Parliament

newzealand.govt.nz



[Beginning of main content](#) | [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

Property Law Act 2007 No 91 (as at 25 September 2008), Public Act

[See other versions](#) | [View PDF copy](#) | [View whole Act \(1188KB\)](#)

[Contents](#) | [« Previous](#) | [Next »](#) | [Search within this Act](#)

Act by section

[Contents](#) > [Part 6 Special powers of court](#) >

[Subpart 4—Trees and unauthorised improvements on neighbouring land](#)

334 Owner or occupier of land may apply for order under section 333

- (1) An owner or occupier of any land may apply for an order under [section 333](#).
- (2) If an order is sought against the occupier of any land, the owner of the land must be joined as defendant.

Compare: 1952 No 51 s [129C](#)

[Contents](#) | [« Previous](#) | [Next »](#) | [Search within this Act](#)

[See other versions](#) | [View PDF copy](#) | [View whole Act \(1188KB\)](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

[Beginning of main content](#) | [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

Help us improve our site and you could win a \$100 book voucher. Take the survey

New Zealand Legislation: Acts

Acts are laws made by Parliament

newzealand.govt.nz



[Beginning of main content](#) | [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

[Home](#) | [Search:](#) Acts Bills Regulations All | [Browse:](#) Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

Property Law Act 2007 No 91 (as at 25 September 2008), Public Act

[See other versions](#) | [View PDF copy](#) | [View whole Act \(1188KB\)](#)

[Contents](#) | [« Previous](#) | [Next »](#) | [Search within this Act](#)

Act by section

[Contents](#) > [Part 6 Special powers of court](#) >

[Subpart 4—Trees and unauthorised improvements on neighbouring land](#)

335 Matters court may consider in determining application for order under section 333

- (1) In determining an application under [section 334](#), the court may make any order under [section 333](#) that it thinks fit if it is satisfied that—
- (a) the order is fair and reasonable; and
 - (b) the order is necessary to remove, prevent, or prevent the recurrence of—
 - (i) an actual or potential risk to the applicant's life or health or property, or the life or health or property of any other person lawfully on the applicant's land; or
 - (ii) an undue obstruction of a view that would otherwise be enjoyed from the applicant's land, if that land may be used for residential purposes under rules in a relevant proposed or operative district plan, or from any building erected on that land and used for residential purposes; or
 - (iii) an undue interference with the use of the applicant's land for the purpose of growing any trees or crops; or
 - (iv) an undue interference with the use or enjoyment of the applicant's land by reason of the fall of leaves, flowers, fruit, or branches, or shade or interference with access to light; or
 - (v) an undue interference with any drain or gutter on the applicant's land, by reason of its obstruction by fallen leaves, flowers, fruit, or branches, or by the root system of a tree; or
 - (vi) any other undue interference with the reasonable use or enjoyment of the applicant's land for any purpose for which it may be used under rules in the relevant proposed or operative district plan; and
 - (c) a refusal to make the order would cause hardship to the applicant or to any other person lawfully on the applicant's land that is greater than the hardship that would be caused to the defendant or any other person by the making of the order.
- (2) In determining whether to make an order under [section 333](#), the court must—
- (a) have regard to all the relevant circumstances (including Māori cultural values and, if required, the matters specified in [section 336](#)); and
 - (b) if applicable, take into account the fact that the risk, obstruction, or interference complained of was already in existence when the applicant became the owner or occupier of the land.
- (3) Despite subsection (2)(b), an order may be made under [section 333](#) if, in all the circumstances, the court thinks fit.

Compare: 1952 No 51 [s 129C](#)

[Contents](#) | [« Previous](#) | [Next »](#) | [Search within this Act](#)

[See other versions](#) | [View PDF copy](#) | [View whole Act \(1188KB\)](#)

[Home](#) | [Search:](#) Acts Bills Regulations All | [Browse:](#) Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

[Beginning of main content](#) | [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

[Help us improve our site and you could win a \\$100 book voucher. Take the survey](#)

New Zealand Legislation: Acts

Acts are laws made by Parliament

newzealand.govt.nz



[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

Property Law Act 2007 No 91 (as at 25 September 2008), Public Act

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

Act by section

[Contents](#) > [Part 6 Special powers of court](#) >

[Subpart 4—Trees and unauthorised improvements on neighbouring land](#)

336 Further considerations relating to trees

- (1) A court determining an application under [section 334](#) for an order for the removal or trimming of a tree under [section 333](#) must have regard to the following matters:
- (a) the interests of the public in the maintenance of an aesthetically pleasing environment;
 - (b) the desirability of protecting public reserves containing trees;
 - (c) the value of the tree as a public amenity;
 - (d) any historical, cultural, or scientific significance of the tree;
 - (e) any likely effect of the removal or trimming of the tree on ground stability, the water table, or run-off.
- (2) Except for a purpose referred to in [section 335\(1\)\(b\)\(i\)](#), the court may not make an order under [section 333](#) relating to any tree that is the subject of a requirement lawfully made by a heritage protection authority under the provisions of [Part 8](#) of the Resource Management Act 1991.

Compare: 1952 No 51 s [129C](#)

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

[Help us improve our site and you could win a \\$100 book voucher. Take the survey](#)

New Zealand Legislation: Acts

Acts are laws made by Parliament

newzealand.govt.nz



[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

Property Law Act 2007 No 91 (as at 25 September 2008), Public Act

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

Act by section

[Contents](#) > [Part 6 Special powers of court](#) >

[Subpart 4—Trees and unauthorised improvements on neighbouring land](#)

337 Court may impose conditions in making order under section 333

- (1) In making an order under [section 333](#), the court may impose any conditions it thinks fit, including conditions for either or both of the following:
- (a) requiring the defendant to make good, or pay compensation to the applicant for, any damage caused to the land of the applicant or any property on that land, in the course of removing or trimming any tree ordered to be removed or trimmed, or the doing of any other work required to be done to eliminate or reduce the risk, obstruction, or interference complained of;
 - (b) requiring the applicant or the defendant, or both of them, to give security for any expenses or damage.
- (2) The reasonable cost of any work necessary to give effect to an order made under [section 333](#) must be met by the applicant, unless the court—
- (a) is satisfied, having regard to the conduct of the defendant, that it is just and equitable to require the defendant to pay the whole or any specified share of the cost of the work; and
 - (b) gives a direction as a condition of the order accordingly.
- (3) Subsection (2) is subject to [section 338\(6\)](#).
- Compare: 1952 No 51 [s 129C](#)

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

Help us improve our site and you could win a \$100 book voucher. Take the survey

New Zealand Legislation: Acts

Acts are laws made by Parliament

newzealand.govt.nz



[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

Property Law Act 2007 No 91 (as at 25 September 2008), Public Act

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

Act by section

[Contents](#) > [Part 6 Special powers of court](#) >

[Subpart 4—Trees and unauthorised improvements on neighbouring land](#)

338 Completion of work required by order under section 333

- (1) The work necessary to carry out an order made under [section 333](#) must be completed within—
 - (a) 20 working days after the date of the making of the order; or
 - (b) a later time specified in the order or subsequently allowed by the court for the completion of the work.
- (2) However, the order may specify that a tree must be kept trimmed, or that a structure to which this subpart applies must be kept in good repair, or that any other work required to be done to eliminate or reduce the risk, obstruction, or interference complained of must be done—
 - (a) as often as is necessary; or
 - (b) at intervals specified in the order.
- (3) Despite subsection (2), a person who is subject to an order of the kind referred to in that subsection may apply to the court for the order to be varied if there has been a change in the circumstances that, had the change occurred before the making of that order, could reasonably be expected to have resulted in the order being different from the one that was made.
- (4) The court may, on an application made under subsection (3), vary the order to reflect the change in circumstances that has occurred since the order was made.
- (5) If the order is not duly complied with within the time specified in this section or in the order, or subsequently allowed by the court, the applicant, with the agreement of the defendant or with the leave of the court, may, in person, or through the applicant's employees, agents, or contractors, enter onto the defendant's land and carry out any work necessary to give effect to the order.
- (6) If work is done by or through the applicant under subsection (5), then, unless the parties otherwise agree or the court otherwise orders, the applicant is entitled to recover from the defendant the whole of the reasonable cost of the work necessary to give effect to the order.
- (7) In granting leave to an applicant under subsection (5), the court may impose any conditions it thinks fit in relation to—
 - (a) the time by which, and the manner in which, any work necessary to give effect to the order must be carried out;
 - (b) security or indemnity against any expenses or damage;
 - (c) the avoidance or making good of any injury or damage;
 - (d) the disposal of all or part of any tree or structure;
 - (e) any other relevant matters.

[Contents](#) [« Previous](#) [Next »](#) [Search within this Act](#)

[See other versions](#) [View PDF copy](#) [View whole Act \(1188KB\)](#)

[Home](#) | **Search:** Acts Bills Regulations All | **Browse:** Acts Bills Regulations All | [Glossary](#) | [About](#) | [Guide](#) | [Site map](#) | [Buy Online](#)

[Beginning of main content](#) [Contact us](#) | [Privacy](#) | [Accessibility](#) | [Feedback](#)

APPENDIX 48.4

Appendix 48.4

Tree nuisance – Common Law

Problems caused by trees on neighbouring land that actually overhang or encroach over adjacent property are subject to the general common law of nuisance.

“Common law” (as distinct from statutory law which is enacted by parliament e.g. 2002 Property Law Act) originates mainly from old British common law but has been developed by court case judgements over the years setting legal precedents that have been used to decide subsequent cases. Landmark judgements made in other countries may also be referred to.

Tort law is part of common law and has application in situations where a tree may be creating a legal nuisance by causing actual damage to someone else’s property and damages (costs) are sought by the affected persons.

For example: In *Davey versus Harrow Corporation* (1957) the Court held that the owner of land on which a tree grows is liable for damages if its roots or branches encroach on adjoining land and cause actual damage.

In another case *Khyatt and Morgan* (1962) it was held that the encroachment of roots was a nuisance for which the occupier of the land encroached upon was entitled to damages and the removal of the offending trees.

Although these are British cases, the legal principals established in such decisions are often referred to and adopted in similar cases in other countries, and vice versa. Common law is applied in the absence of any statutory (enacted by parliament) law relevant to the particular situation.

Some tree issues that have been dealt with and decided in common law include the following:

Landowners have a legal right to plant and cultivate trees on their land.

Notwithstanding the above, tree owners have a responsibility to ensure that they do not have an injurious or deleterious effect on neighbouring land or unduly interfere with the use or enjoyment of that land or create a hazard.

Councils are also subject to common law relating to nuisance as the Local Government Act 2002 states in Subpart 191, that this subpart does not entitle a local authority

- (a) to create a nuisance; or
- (b) to deprive the Crown or any person of any right or remedy the Crown or the person would otherwise have against the local authority or any other person in respect of any nuisance

Councils must therefore manage their trees in accordance with the same rules as everyone else.

In New Zealand, applications for damage and nuisance under common law can only be made if the branches or roots of trees are actually encroaching over the adjoining land.

Where parts of the tree do not encroach or trespass over neighbouring land, the only remedy is the provisions of the Property Law Act 2007. Sections 332 – 338. (Refer to Appendix 48.3). This law was enacted specifically to deal with problems such as shading, tree hazards or loss of views that are caused by trees (and other structures) that do not actually encroach over the land but still created the sort of problems described above. The Property Law Act applies only to land used (or proposed to be used) for residential purposes.

Tree issues frequently dealt with under common law and guidelines.

Firstly, before setting out on the road to litigation, communicate with the owner(s) of the tree and inform them of the problems you are experiencing. It is entirely possible that they will be prepared to act reasonably and carry out works that will improve your situation (hopefully without recourse to felling or severe pruning of the kind that would destroy the health appearance of the tree).

When planting trees near boundaries, try to estimate the dimensions the tree will grow to in maturity and any detrimental impact this may have on property improvements and structures also the occupier's future use and enjoyment the adjacent land, including any undue shading that may occur. Remember that if a tree is planted so close the boundary that the trunk itself eventually straddles the boundary, then it will end up being co-owned by the neighbour, regardless of who planted it.

The land owner is responsible for any trees growing on that land and has no right in law for any part of a tree to encroach or trespass over neighbouring land and cause damage or create a nuisance. If this happens the neighbour is entitled to "abate" the trespass or nuisance by cutting the tree parts back to the boundary or apply to a district court for an order for the offending trees to be removed or trimmed by the owner.

The court may decide that the costs of any work are to be borne by the tree owner on the grounds that he/she has no right to put the neighbour suffering the problem, to all the trouble or expense.

In common law it is no defence to claim that an offending tree was already a large specimen and encroaching over the boundary when the applicant neighbour became the owner of the land.

While a neighbour suffering tree related damage or loss of enjoyment of the property has the right in law to cut or trim encroaching tree parts, this right is subject to the following limitations:

The cutting must not extend beyond the boundary line.

The cutting operation must be carried out wholly on your own side of the boundary (unless the tree owner agrees to the work being carried out on his side).

You are responsible for the disposal of any parts of the tree that you cut off, you cannot deposit them onto the tree owner's property (without consent).

The cut off parts of the tree are still legally the property of the tree owner, and may be of some value (e.g. fruit or firewood) and should be offered back to the owner before disposal or keeping them for personal use.

Although you are legally entitled to remove encroaching tree parts, any work that is carried out should not be to the extent that the tree is destroyed or rendered in a hazardous or unstable condition in any way.

Poisoning the tree, even if applied to the soil or carried out on the parts tree encroaching on your own land, could lead to legal action damages/costs being awarded against you, as your actions may be held to have had a deleterious or damaging effect on someone else's land or property..

A tree whose trunk straddles a boundary is considered to be in joint ownership. Therefore, no work such as felling or any other operation immediately or potentially detrimental to the health or safety of the tree should be carried out without co-owner's consent. If consent is not forthcoming, an application can be made to a district court for remedial tree work.

It is an owner's responsibility to ensure that the trees on their land are in a healthy and safe condition. Qualified arborists should be engaged to assess this as they will be able to detect structural defects or signs of instability in trees that may not be apparent to the lay person.

If an apparently sound and healthy tree blows down in a storm and causes damage to persons or property, this is deemed in law as an "act of god" which the tree owner will not be held legally responsible for.

If a tree or part of a tree falls and causes injury to persons or property, and it is quite evident that it had structural or stability defects were so significant that they should reasonably have been detected and abated in a timely fashion by a prudent person; then the owner of the tree may be held to be negligent and therefore liable for any injury or damage caused..

In cases where trees may present a hazard to persons, tree owners have a legal **"duty of care"** to ensure that the activity of managing and cultivating any trees under their control does not cause harm to anyone.

Where someone has suffered personal injury from a tree or part that has failed, and the potential for failure and harm is held to have been reasonably foreseeable, then the tree owner may be considered to be in breach this duty of care and found liable in law.

N.b

The above is a collation of information obtained from various records and sources about nuisance caused by trees in relation to legal decisions made under common law. Some initial guidelines are included for those experiencing tree problems or considering planting on their land. However, it should be remembered that common law is subject to no special rules and any new tree issue before the court may raise new questions in law and result in decisions from time to time that are different in some respects to those mentioned above. Because of this, professional legal advice should be always be sought before proceeding with any legal action.