

Appendix two – Trees and causes of action

You may be granted relief under one or more of the following causes of action but there are a number of matters which need to be proved and the outcome of any action is uncertain.

	Negligence	Private nuisance	Trespass to land
What it is	<p>A negligence action is where:</p> <ul style="list-style-type: none"> there was a duty of care owed to the plaintiff by the defendant (the person whose property the tree is growing from) the defendant breached his/her duty of care, and the defendant's breach of duty caused loss or damage to the plaintiff. The damage must be reasonably foreseeable and not too remote. 	<p>A private nuisance action is where:</p> <ul style="list-style-type: none"> there is a substantial and unreasonable interference with a person's use and enjoyment of the land by the defendant, and the plaintiff suffers damage as a result. The damage must be reasonably foreseeable and not too remote. 	<p>A trespass action is:</p> <ul style="list-style-type: none"> where there has been a direct and intentional (or negligent) interference with a plaintiff's person, land or goods, and where the plaintiff suffers damage as a result of the trespass the plaintiff may be to get damages. The damage must be reasonably foreseeable and not too remote.
How it applies in the context of a bushfire	Your neighbour may have a duty to clear the area (if permitted) and make sure that his/her trees did not pose a hazard to others on adjacent land.	The falling of the tree due to the bushfire may let you to use nuisance as a reason for your court case.	Your neighbour may be responsible for any tree that falls onto your property.
Does the fire take away the responsibility from the land owner/occupier?	Depending on the circumstances, a court may regard the bushfire, because of its unusual size and ferocity, an 'intervening event'. This means that it cannot be said that your neighbour's actions caused the damage.	Depending on the circumstances, your neighbour may not be responsible if the court decides that he/she did not create the nuisance (for example, because of the unusual size and ferocity of the bushfire) and was therefore not at fault.	Depending on the circumstances, your neighbour may have no liability because there was a bushfire which caused this and therefore no intentional or negligent interference on the neighbour's part.
Potential outcome	If any claim by you succeeds, you will be able to get	If any claim by you succeeds, you will be able	If any claim by you succeeds, you will be able

	<p>'damages' (money) from your neighbour to compensate you for any loss and damage suffered by you.</p> <p>If any claim by you fails, for example, because the bushfire was an intervening event, you will not be able to get damages from your neighbour.</p>	<p>to get money from your neighbour to compensate you for any loss and damage suffered by you.</p> <p>If any claim by you fails, for example, because the neighbour is found not to have created the nuisance and was not at fault, you will not be able to get any damages from your neighbour.</p>	<p>to get money from your neighbour to compensate you for any loss and damage suffered.</p> <p>If any claim by you fails, you will not be able to get any damages from your neighbour.</p>
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Note: this contains comments of a general nature only. Your position and right to relief will depend on your specific circumstances.

DISCLAIMER

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