

How to Resolve Tree Disputes



Introduction

Problems with trees are a common cause of neighbourhood disputes. Below are some commonly asked questions and information about how to resolve disputes.

What is the relevant legislation?

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld) (the Act), particularly Chapter 3. This legislation provides options for resolving tree disputes between neighbours on residential land only.

Who is the responsible Court or Tribunal?

The Queensland Civil & Administrative Tribunal (QCAT) will hear and decide any dispute involving land affected by a tree. Depending on the case, QCAT may make a decision regarding either the recovery of a debt for removal of overhanging branches or to do with a tree itself.

How does the Act deal with tree disputes?

The Act provides pathways for asserting a person's common law right to resolve a tree issue (Chapter 3, Part 3), the removal of overhanging branches (Chapter 3, Part 4) and any other issues caused by a tree (Chapter 3, Part 5).

Who is a tree-keeper?

Generally, a tree-keeper is considered to be the registered owner of land where a tree is located.

What is a tree?

The following vegetation falls under the Act's definition of a tree:

- any woody perennial plant;
- any plant resembling a tree in form or size (i.e bamboo, palm or cactus);
- a vine;
- a trunk;
- a stump;
- a dead tree; or
- any plant defined as a tree by regulation.

When is your land impacted by a neighbour's tree?

Your land is considered to be impacted if:

- branches from a tree overhang the land;
- the tree has or is likely to cause (over the next 12 months):
 - serious injury to a person;
 - serious damage to the land or property;

- substantial, ongoing, and unreasonable interference with a neighbour's use and enjoyment of their land; and
- the land adjoins the land on which the tree is situated or would adjoin it, if it were not separated by a road.

What are a tree-keeper's responsibilities?

A tree keeper is responsible for cutting and removing any overhanging branches on their neighbour's property (section 52(1) of the Act).

They must also ensure that a tree will not:

- seriously injure a person;
- seriously damage land or property; or
- unreasonably interfere with their neighbour's use and enjoyment of their land (section 52(2) of the Act).

How do I resolve an issue about overhanging branches?

The Act encourages neighbours to resolve issues about trees informally, with mediation or QCAT proceedings being considered a last resort. Keeping good relations between neighbours may assist in resolving neighbourhood disputes before they escalate.



Mediation between you and your neighbour may be of assistance. BCLS offers a free mediation service that can deal with neighbourhood disputes such as tree matters. Further information can be found on our website or by contacting our office.

The Disputes Resolution Branch (DRB) may also be able to assist with mediation. You can find out more information about the DRB on the Queensland Government website.

However, if a neighbour's tree is causing a problem that must be dealt with immediately, you are within your rights to remove any overhanging branches/roots which are on YOUR land (up to the boundary line) and can dispose of them. You are not required to return the removed branches to your neighbour but can do so if you wish.

Alternatively, you can give your neighbour a notice asking them to remove the overhanging branches within 30 days (Part 4 of the Act).

It is important to note that if the tree in question is located near a waterway, in bushland, is a 'large significant' tree or is of native heritage value, your local city council may have issued a vegetation protection order **and thus will require a permit before the tree can be removed.**

To check if a tree is protected by such a protection order, you can request a map and report online.

How does Part 4 assist in dealing with overhanging branches?

If branches overhang at least 50cm and are less than 2.5 metres from the ground, a neighbour may serve a notice on a tree-keeper requiring the overhanging branches be removed.

This notice must:

- provide 30 days in which to remove the overhanging branches (section 57(3)(a) of the Act).
- ask the tree-keeper to give the neighbour written advice no later than one day before if anyone will enter their property to remove the branches;
- provide consent for the tree-keeper or a contractor to enter the neighbour's property;
- provide a written quotation for proposed works; and
- enclose a copy of Part 4 of the Act.

A copy of the Notice For Removal of Particular Overhanging Branches can be found attached to this kit.

Importantly, if the tree-keeper has already been served a notice for any tree in the last 12 months (under section 57(2) and 57(5) of the Act), **you cannot give another notice.**

What can I do if my neighbour ignores the notice or doesn't remove the overhanging branches?

If the overhanging branches are not removed within the time period specified in the notice, a neighbour may:

- Have the overhanging branches cut and removed; and
- Claim reasonable expenses up to a maximum of \$300 per year for the removal of overhanging branches (this would be recovered via QCAT).

Can the tree-keeper's property be entered without permission?

A person can only enter property owned by another person if:

- an agreement has been reached with the owner of the property;
- QCAT has ordered relevant work to be carried out by the person entering the property (under section 94 of the Act); or
- a notice to remove overhanging branches has been given. In this case, the person entering the property must give the owner written notice no later than the day before stating the time, date and who will cut and remove the overhanging branches.

What if a Notice for Removal does not resolve the issue?

Your next step would be to apply to QCAT for an order in respect to a tree dispute under section 66 of the Act to prevent:

- serious injury to a person;
- serious damage to land or property; or
- substantial, ongoing and unreasonable interference with the use and enjoyment of the neighbour's land.

A claim of substantial, ongoing and unreasonable interference with the use and enjoyment of land due to an obstruction of sunlight or view only applies:

- to trees that rise at least 2.5 metres above the ground; and
- where there is a severe obstruction of sunlight to a window or roof of the neighbour's dwelling; or
- a severe obstruction of a view that existed when the neighbour took possession of the land (section 66(3) of the Act).

If you choose to apply to QCAT, you must provide a copy of any QCAT application to the tree-keeper at least 21 days before a QCAT hearing (section 63 of the Act).

How much does it cost to submit an application to QCAT?

The fee to lodge an application to QCAT is approximately \$367.00 (as at November 2022). Further information about current fees can be found on the QCAT website.

If you are in financial hardship, you can apply to QCAT for fee relief by submitting an Application for waiver of fees by reason of financial hardship.

What does QCAT consider when making an order under Part 5 of the Act?

QCAT may make an order pursuant to section 66 of the Act if it is satisfied that:

- the neighbour has made a reasonable effort to reach agreement with the tree-keeper (section 65(a) of the Act);
- the neighbour has taken all reasonable steps to resolve the issue under any relevant law or administrative process (section 65(b) of the Act);
- the extent the dispute relates to overhanging branches that cannot be dealt with under Part 4 of the Act; and
- the neighbour has given the tree-keeper a copy of the application in accordance with section 63 of the Act.

What factors does QCAT consider when making an order?

The Act provides factors for QCAT to consider when making an order include:

- safety of any person;
- avoiding the removal or destruction of a living tree;
- location of the tree to the boundary;
- type of tree (or plant);
- historical, cultural, social, scientific value of the tree;
- contribution to biodiversity, the ecosystem, public amenity; amenity of the land and soil stability;
- impact on the tree of pruning; and
- whether works would require consent.

In relation to allegations of unreasonable interference, QCAT (under section 75 of the Act) may also consider factors such as:

- anything other than the tree that has or is contributing to the interference;
- steps either the tree-keeper or neighbour have taken to prevent or minimise the interference; and
- whether the tree existed prior to the neighbour acquiring the land.

What orders can QCAT make?

QCAT may make orders (but not limited to) that:

- require a tree-keeper to carry out work on a tree – this may also include ongoing work;
- require either a tree-keeper or neighbour to pay the costs of works in compliance with an order; or
- pay compensation for damage to a neighbour's land.

If the tree-keeper fails to comply with QCAT's order and does not have a reasonable excuse for doing so, they can be fined up to \$100,000.

Steps to complete a QCAT Tree application

1. Access an Application for tree dispute – *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* form online.
2. Work through the form and provide details where required.
3. Please note that the form cannot be saved. Complete and check the form thoroughly before printing.

4. Sign the form.
5. Attach any required documents such as photos.
6. Copy the form at least two times. Three complete applications will need to be submitted to QCAT. Sometimes more copies will need to be provided if there are more parties involved such as the local council.
7. Lodge your application:
 - By post to QCAT, GPO Box 1639, Brisbane, Q 4001; or
 - In person to - QCAT, level 11, 259 Queens Street, Brisbane; or
 - The QCAT Registry located in your local Magistrates Courthouse.
8. Pay your application fee.

Steps to complete a QCAT Tree Response

1. Access a Response to application for tree dispute - *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* form online.
2. Work through the form and provide details where required.
3. Please note that the form cannot be saved. Complete and check the form thoroughly before printing.
4. Sign the form.
5. Attach any required documents such as photos.
6. Copy the form at least two times. Three complete applications will need to be submitted to QCAT. Sometimes more copies will need to be provided if there are more parties involved such as the local council.

7. Lodge your response:

- By post to QCAT, GPO Box 1639, Brisbane, Qld 4001; or
- In person to QCAT, level 11, 259 Queens Street, Brisbane; or
- The QCAT Registry located in your local Magistrates Courthouse.

8. At the time of writing, there was no fee payable to submit a response. You should check the QCAT website to clarify this before filing your response.

9. A stamped copy of your response must be provided to the other party as soon as practicable after submitting the response with QCAT.

How to book an appointment for legal advice

If you would like legal advice about a tree dispute, BCLS can help. You can make an appointment by calling or emailing our office (contact details below). The person initially contacting you will not be a lawyer, but they will be able to arrange an appointment for you to speak with one.

Bayside Community Legal Service acknowledges the traditional owners of the lands across Queensland, and in particular the Quandamooka peoples, the traditional owners of this land where our Bayside community is situated. We pay our respect to elders past, present and emerging.

Contact Bayside Community Legal Service

Website: www.bcls.org.au

email: info@bcls.org.au

Phone: (07) 3162 3282

Office Hours: 8:30am-4:30pm Monday to Thursday

Address: Wynnum Community Centre,
105 Florence Street,
Wynnum QLD 4178
PO Box 103, Wynnum QLD 4178

**NOTICE FOR REMOVAL OF PARTICULAR
OVERHANGING BRANCHES**
*Neighbourhood Disputes (Dividing Fences and Trees) Act
2011 – Chapter 3 Part 4*

THIS NOTICE ONLY APPLIES TO BRANCHES THAT EXTEND AT LEAST 50CM FROM THE
COMMON BOUNDARY AND THAT ARE 2.5M OR LESS ABOVE THE GROUND

To:

Address:

Please take notice that I am asking you (the tree-keeper) to cut and remove the overhanging branches of the tree situated on your land at:

(Insert description of land e.g. street address, lot number or other identifying particulars)

which overhang my land at:

(Insert description of land e.g. street address, lot number or other identifying particulars)

Please carry out this work on or before the:

(Date must be at least 30 days after day this notice is given to the tree-keeper)

Location of the tree:

(Describe location of tree on the tree-keeper's land)

Description of tree:

(Describe the tree – this does not have to be a botanical description)

I propose that the work on the tree be carried out to the common boundary line of the adjoining lands described above.

The following documents are attached to this notice in accordance with the requirements of Chapter 3 Part 4 s57(3)(d) of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*:

1. A copy of one (1) written quotation which states that the estimated cost of work on the tree

is:
\$

(The tree-keeper may obtain an independent quote, do the work themselves, or hire a contractor of their choice).

2. A copy of Chapter 3 Part 4 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

If you agree to cut and remove the overhanging branches, please complete the attached 'Response to Notice for Removal of Particular Overhanging Branches' and return a signed copy to me at least one (1) day before anyone enters my land to cut and remove the branches.

The 'Response to Notice for Removal of Particular Overhanging Branches' must state the name of the person who will cut and remove the overhanging branches and the day on which the work will be carried out.

I/We give permission to you or your contractor to enter my land to cut and remove the overhanging branches on the day and time advised by you in your 'Response to Notice for Removal of Particular Overhanging Branches'.

If you do not agree to cut and remove the overhanging branches within the time specified above, then section 58 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* provides that I may cut and remove the overhanging branches, or arrange for someone else to cut and remove the overhanging branches and recover a maximum of \$300.00 per annum as a debt for reasonable expenses incurred by me in cutting and removing the overhanging branches (this does not include the cost of my/our labour).

Name:

Address:

Signature/s:

Date:

FORM 3: NOTICE FOR REMOVAL OF PARTICULAR OVERHANGING BRANCHES
Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Chapter 3 Part 4

Notes:

Section 56(1) of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (the Act) encourages tree-keepers and neighbours to resolve tree issues informally.

Section 57(1) applies only if the branch extends to a point over the neighbour's land that is more than 50cm from the common boundary and only to the extent the branch is 2.5m or less above the ground.

Section 57(3)(b) of the Act requires that the neighbour must ask the tree-keeper to give a written notice no later than the day before anyone enters the neighbour's land to cut and remove the branches that states the person who will cut and remove the overhanging branches and the date and time when the work will be carried out. The work must be carried out at a time at least 30 days after the date the notice is given and between the hours of 8.00am and 5.00pm or as otherwise agreed.

Section 57(3)(c) of the Act requires that the neighbour must give permission to the tree-keeper or the tree-keeper's contractor to enter the neighbour's land on the day advised to cut and remove the overhanging branches.

It is the neighbour's responsibility to consider public liability insurance before giving a person permission to enter the neighbour's land.

It is the tree-keeper's responsibility to consider contractor's insurance before engaging a contractor to carry out work on a tree.

A copy of the Act may be accessed at www.legislation.qld.gov.au.

PLEASE KEEP A COPY OF THIS NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS NOTICE WAS GIVEN TO YOUR NEIGHBOUR.

RESPONSE TO NOTICE FOR REMOVAL OF PARTICULAR OVERHANGING BRANCHES

I/We hereby agree to the your proposal contained in the 'Notice for Removal of Particular Overhanging Branches' dated:

and given to me/us on the:

by:

of:

The name of the person/contractor who will cut and remove the overhanging branches is:

Name:

Address:

The work on the tree will be carried out on the / / at am/pm.

Name:

Address:

Signature/s:

Date:

PLEASE KEEP A COPY OF THIS NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS AGREEMENT WAS GIVEN TO YOUR NEIGHBOUR.