

Neighbourhood Disputes Resolution Act 2011 (Qld) – An Interpretation

The *Neighbourhood Disputes Resolution Act 2011* (Qld) (**'the Act'**) came into force in Queensland on 1 November 2011 and replaces the *Dividing Fences Act 1953* (Qld). The Act confirms the common law position that a dividing fence is owned equally by the adjoining owners if it is built on the common boundary.

Key differences in the new Act include a widening of the term 'fence' to include hedges and a clearer definition of the term 'sufficient dividing fence' as distinct from a 'retaining wall'. The Act preserves the common law right of abatement – which in simple terms means a neighbour of the tree-owner has the right to have the branches or roots of the tree removed to the boundary line if it is considered a 'nuisance'.

Responsibility now rests upon on the tree-owner to ensure that their neighbour's land is not affected by their trees. Land is deemed to be affected by a tree if the neighbour can show that the tree has caused, or is likely to cause within the next 12 months:

- a serious injury to a person
- serious damage to the neighbour's land or property
- substantial, ongoing or unreasonable interference with the neighbour's use and enjoyment of their land (e.g. severe obstruction of sunlight or a pre-existing view)

The Act now provides that a neighbour can choose whether to return those branches and roots to the tree-owner, rather than being compelled to previously.

Furthermore, if a neighbour wishes a tree-owner to take responsibility for any tree works intruding over the property boundary line, the neighbour may now serve a notice to the tree-owner that the tree work be undertaken.

It should be noted that the notice can only apply to branches extending not less than 50cm over the boundary line and not more than 2.5m above ground level. If the tree-owner does not respond to this notice, the neighbour may proceed to have to have the pruning done and recover an amount of not more than \$300.00 per annum from the tree-owner. The notice system cannot be used if there is a vegetation or tree protection order over the tree. You must consult your local city council regarding any applicable local laws relevant to protected vegetation (these vary between local councils). Alternatively, the tree-owner can prune the branches or hire a suitably qualified arboricultural contractor to do so.

Should a tree in question bear fruit on the neighbour's side of the boundary, the neighbour can choose whether to keep the fruit or return it, rather than being compelled to as previously.

Sellers of residential and commercial property in Queensland will now be required to give a copy of any tree orders or applications to the Queensland Civil and Administration Tribunal (QCAT) existing at the date of contract, to buyers before the buyer enters into a contract. Should a seller fail to provide these disclosures, it could lead to the buyer terminating the contract at any time before settlement or, should settlement have taken place, the seller being liable to comply with the QCAT order after settlement.

In conclusion it is suggested that neighbours of tree-owners follow the steps outlined below:

1. Try and resolve the issue informally with the tree-owner by discussing the situation
2. Contact a suitably qualified arboricultural consultant to provide advice on the potential next steps
3. If unable to resolve the issue informally with the tree-owner, serve notice to the tree-owner for work to be undertaken

4. If neighbour refuses to action on notice, have tree work undertaken and notify tree-owner of their liability to the sum of \$300.
5. If payment is not forthcoming from tree-owner, contact QCAT for debt recovery procedures to be undertaken.

For further information:

<http://www.justice.qld.gov.au/corporate/justice-initiatives/neighbourhood-disputes-resolution-act-2011>

– for further information on the *Neighbourhood Disputes Resolution Act 2011* (Qld) of contact the Department of Justice and Attorney General on (07) 3239 3520.

www.qcat.qld.gov.au – for information on dispute resolution and debt recovery or contact QCAT on 1300 753 228.

www.arboroperations.com.au – for advice and consultation regarding tree pruning, removal and viability or contact Arbor Operations on (07) 3861 9933.