

NEIGHBOURHOOD DISPUTES RESOLUTION BILL 2010

Explanatory Notes

Reasons for the Bill

The Review of Neighbourly Relations (the Review) was launched in 2007. The objective of the Review was to find more efficient ways of assisting neighbours to resolve their disputes.

The Review considered the current laws, processes and remedies available to neighbours and their practicality when applied to common neighbourhood disputes about dividing fences and trees. The Review was conducted in two stages. Stage 1 focused on dividing fences and Stage 2 addressed the issues of resolving neighbourhood disputes and trees and their relationship with the common law of nuisance.

The Review found that the *Dividing Fences Act 1953* (called “the 1953 Act”) needed to be replaced with contemporary legislation in a modern drafting style.

The Review also found that the application of the common law of nuisance to a neighbourhood dispute about trees did not provide a realistic solution for people living in closely settled communities in Queensland.

At common law an action in private nuisance is available in circumstances where a tree causes substantial and ongoing interference with a person’s use or enjoyment of land. This action can be invoked for physical damage to the land, property on the land and person, and for disturbance of the owner or occupier’s comfort, health or convenience to an unreasonable extent.

Achievement of the Objectives

The Bill provides effective dispute resolution options for neighbours to resolve issues about trees and fences and reduce neighbourly disputes.

Chapter 2 Dividing Fences

The Bill replaces the 1953 Act. Chapter 2 deals with dividing fences. The chapter contains an expanded definition of fencing work and a simplified process for the giving of notices. The chapter contains more guidance as to the meaning of a sufficient dividing fence.

Chapter 3 Trees

The Bill enables an owner of land to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an order to remedy, restrain or prevent damage to the owner's land or property on the land, and to prevent injury to a person on the land, or substantial ongoing and unreasonable interference with the neighbour's enjoyment of their land as a consequence of a tree situated on adjoining land.

A tree keeper is responsible for ensuring that their tree does not cause damage to the neighbour's land and property, injury to a person on the neighbour's land or otherwise interfere unreasonably with the neighbour's enjoyment of their land.

The Bill establishes a legislative framework giving QCAT jurisdiction to make orders on the application of a neighbour for the removal and pruning of a tree growing on adjoining land and payment of compensation. It introduces a statutory right of relief on grounds outlined in the Bill which ensures applications are dealt with by QCAT in a way that is accessible, fair, just, economical, informal and timely.

A statutory obligation is imposed on a tree keeper to prune branches overhanging onto his or her neighbour's land upon the neighbour giving notice to the tree keeper. If a tree keeper fails to fulfil his or her obligations, the neighbour is able to carry out the work on the tree and recover reasonable costs. The pruning of the tree is subject to any requirements of a vegetation protection order or other like order placed by the State or local government on the tree.

The importance of considering the contribution trees make to the environment is reflected in the Bill. QCAT is required to consider several matters in relation to a tree before deciding an application. However, QCAT must give primary consideration to the safety of individuals under clause 72(1). This will promote community safety. If a

tree is ordered to be removed by QCAT, then the Bill provides that QCAT may order that another tree be planted in its place.

A state law will prevail over a local law to the extent of any inconsistencies.

Alternative Ways of Achieving Objectives

A range of options were developed in response to the Review.

- for dividing fences - retaining the status quo, amending or repealing the 1953 Act;
- for trees - retaining the status quo and reliance on the common law, mandating that local councils regulate tree disputes (it is not mandatory for councils to make local laws on trees), amending the common law as it relates to trees and introducing laws regulating the planting of trees; and
- for remedies and enforcement - establishing a neighbourhood court, giving the Dispute Resolution Branch within the Department of Justice and Attorney-General the function of providing conciliation services in relation to tree and fence disputes, and making all mediation agreements enforceable in QCAT.

Estimated Cost for Government Implementation

The Bill does not impose any additional obligations on Government agencies that cannot be met from existing appropriations.

Consistency with Fundamental Legislative Principles

The statutory remedies in the Bill do not limit neighbours invoking common law actions such as abatement. Neighbours will have a choice – they can cut and remove overhanging branches, give notice to the tree keeper to cut and remove overhanging branches at the tree keeper's costs, apply to QCAT for relief, or seek a remedy through the superior Courts with leave of QCAT.

Consultation

Community

Extensive community consultation was undertaken for both stages of the Review. Community stakeholders were overwhelmingly supportive of the replacement of the

1953 Act and the introduction of state-wide legislation to deal with trees in the neighbourhood.

Government

Ongoing consultation with all government agencies occurred in the development and drafting of the Bill.

Chapter 1 Preliminary

Clause 1

Short title

Establishes the short title of the Bill as the *Neighbourhood Disputes Resolution Bill 2010*.

Clause 2

Commencement

Provides for the commencement of this Bill on a day to be fixed by proclamation.

Clause 3

Act binds all persons

This Bill binds all persons, including the State and to the extent the legislative power of the Parliament permits, the Commonwealth.

Clause 4

Definitions

The Dictionary in the schedule defines particular words used in this Bill.

Clause 5

Objects

The main objects of the Bill are to provide rules about each neighbour's responsibility for fences and trees so that neighbours are generally able to resolve issues about fences or trees without a dispute arising. In cases where a genuine dispute does arise

between neighbours about fences or trees, the Bill facilitates the resolution of any dispute by reference to a compulsory conference, conciliation or QCAT hearing.

Matters relating to Fences are dealt with in Chapter 2 of the Bill.

Matters relating to trees are dealt with in Chapter 3 of the Bill.

Clause 6

Relationship with other Acts or laws

The Bill does not affect the operation of another Act except where provided in the Bill.

CHAPTER 2 Dividing Fences

Part 1 Introduction

Clause 7

Overview

This clause provides an overview of this chapter. It is a principle of the legislation that there should be a sufficient dividing fence between 2 parcels of land, if an adjoining owner requests one.

There are two occasions in which there need not be a sufficient dividing fence.

First, this includes when either parcel is excluded land. The provisions as to excluded land replace the previous s.4 of the 1953 Act dealing with unalienated Crown land.

Second, it also includes the situation in which there are 2 parcels of agricultural land. Generally, when land is solely used for agriculture (for example, cane farming), it is not necessary to fence, as it is not necessary to restrain stock and fencing reduces the amount of land available for farming. The practice under the 1953 Act was to consider the purposes for which the land was used, and in considering this, the conclusion could be reached that no fence was necessary.

Further the Bill establishes a presumption that neighbours must contribute equally to the cost of building and maintaining a sufficient dividing fence. The same rule applied under the 1953 Act, however, the new Bill provides more guidance as to the meaning of a “sufficient dividing fence”.

The Bill establishes a new rule that neighbours must not attach something to a dividing fence that materially alters or damages the fence. Both neighbours own the dividing fence, so it should be kept in its original form unless otherwise agreed. Unfortunately items can be added to the dividing fence, for example, extra wire, tarpaulins or part of the structure of a car port. The Bill provides relief when this occurs.

The Bill encourages neighbours to resolve a dividing fence issue informally, but when this does not occur provides for resolution by QCAT.

Clause 8

What is outside scope?

This clause ensures that this chapter does not apply in relation to excluded land or adjoining land comprised of 2 parcels of agricultural land.

Clause 9

No affect on agreements or particular law

This clause ensures that this Bill does not affect agreements between adjoining owners about dividing fences (whenever made), and agreements about fencing, for example, covenants in residential developments, a by-law for a community titles scheme and any law relating to retaining walls or rights of support (refer to s. 179 *Property Law Act 1974*).

Part 2 Interpretation

Clause 10

Meaning of fence

This clause provides the meaning of a fence.

The definition of a fence includes hedges or vegetative barriers for the first time.

There is another improvement on the definition in the 1953 Act, because this Bill distinguishes what is a foundation for a fence from a retaining wall. It is meant to overturn the decision in *Jackson v Randall* [2002] 2 Qd R 31.

The clause contains a definition of retaining wall. A retaining wall is not a fence. It serves a different purpose.

As the NSW Law Reform Commission explained in its Report 59 (1988) Community Law Reform Program: Dividing Fences, at paragraph 4.8:

“Retaining walls serve quite different purposes from fences. They are usually substantial and expensive structures which repose within the subsurface of the land of one adjoining owner, and are therefore required to withstand considerable lateral stress. They also interfere with the cross-flow of subterranean water and so must normally include weep holes and other drainage works. The foundations or footings often encroach substantially upon the downward adjoining landowner. Retaining walls are usually erected solely for the benefit of the owner who undertakes excavation work:...”

Alternatively, retaining walls can be established to support “built up” earth. Generally retaining walls involve engineering specifications prior to construction. They are more than the mere levelling of dirt.

Unlike fences, it is not usually possible to make both adjoining owners liable for the cost of maintaining, repairing or replacing a retaining wall. This is because usually a retaining wall is of greater benefit to one of the adjoining owners.

Clause 11

Meaning of *dividing fence*

A dividing fence means a fence constructed on the common boundary line of adjoining lands.

However, to the extent it is impractical to construct a fence wholly on the common boundary line of the adjoining lands because of physical features or the adjoining lands comprise 1 or more parcels of pastoral land separated by a watercourse, lake or

other natural or artificial feature insufficient to stop passage of stock, a fence constructed on a line other than the common boundary is also a dividing fence.

Clause 12

Meaning of *sufficient dividing fence*

This clause provides more guidance than the 1953 Act as to what is a sufficient fence.

It provides a basic rule of height for 2 parcels of residential land and refers to types of construction material. While generally a provision of this nature would be considered to be a matter for local councils, given the number of councils and the degree of inconsistency between local laws, it has been included in the Bill.

The basic rules stated for a fence are not intended to imply that any dividing fence less than that standard is now insufficient. For example, there may be great contention between adjoining owners as to whether an existing fence is sufficient and whether it needs repair rather than replacement. In older more established suburbs, the usual fence may have been a short chain wire or picket fence. It is not intended by this legislation that the shorter fence should now be considered insufficient and needs to be replaced. If a fence is sufficient to divide and is serving this purpose well, it should be retained. In fact, the history of the fencing between the properties and in the surrounding area should be treated as a very good guide as to what is sufficient.

In the case of 2 parcels of pastoral land, the fence must be sufficient to restrain livestock of the type run on each of the parcels. In addition, the adjoining owners can agree or QCAT can order that a particular fence is a sufficient dividing fence. When deciding what is a sufficient dividing fence, QCAT must refer to the matters mentioned in clause 36. In some cases, an adjoining owner will build a fence within their own boundary, in order to have the kind of fence they desire. This can create many difficulties, including, that of maintaining a dividing fence.

There have been inconsistent decisions in the past about the appropriate treatment of such a fence, so the Bill clarifies the matter. Under the Bill, in deciding whether there is a sufficient dividing fence, the existence of a fence, other than a dividing fence, on adjoining land, is not to be taken into account. If there is such a fence on adjoining

land, and it is necessary for it to be removed for fencing work to occur, QCAT can order its removal under clause 33.

Clause 13

Meaning of owner for land

The meaning of an owner is central to this chapter of the Bill. An owner includes the holders of the property interests specified in this clause.

Clause 14

Meaning of adjoining owners and adjoining land

This clause also introduces the concept of adjoining owners. These are the owners of land on either side of a common boundary. The concept also includes the owners of agricultural land or pastoral land on either side of a road or a watercourse, if QCAT is of the opinion that there is a fence that has been or could be used as a dividing fence for the 2 parcels of land.

This clause also contains the definition of adjoining land which is the land on either side of a common boundary.

Clause 15

Meaning of fencing work

The Bill introduces a single definition of fencing work. This includes design construction, modification, replacement, repair of whole or part of a dividing fence. It also includes obtaining approval for fencing work.

Under the previous legislation, there were separate procedures for the construction of a dividing fence and for the repair of a dividing fence. In other jurisdictions, some owners have been deprived of contribution because the court held that they had proceeded under the incorrect section (that is, that they have sought repair, but should have sought demolition and construction of a new fence). This has reportedly happened in this State. To avoid this situation, the New South Wales Law Reform Commission proposed that a single definition of fencing work should be the basis of the procedure for determining disputes.

The new definition will allow a single step for design, construction, modification, replacement and repair. When an adjoining owner wants to seek contribution for a new fence or the repair of an existing fence, they will use a single form.

The new definition of fencing work is significantly expanded from the 1953 Act. It clarifies that fencing work includes other activities, which are necessary for fencing work, including surveying, preparation of land (including trimming, lopping or removal of vegetation). It also includes planting, replanting and maintenance of a hedge or other vegetative barrier as a dividing fence and the cleaning of a ditch, embankment or watercourse that serves as the dividing fence.

Clause 16

Meaning of *authorisation*

There is a new concept of authorisation in relation to a dividing fence which includes an agreement between adjoining owners or a QCAT order.

Clause 17

Meaning of *excluded land*

This clause explains how the legislation does not apply to certain land. Originally dividing fences legislation came into being as the land was developed. Upon settlement of Australia by the United Kingdom, all land was treated as owned by the Crown. In *Mabo v Queensland (No.2)*, delivered by the High Court of Australia on 3 June 1992, it was recognised that native title existed at common law.

As land was “alienated” from the Crown, interests (leases, freehold titles) were established and conferred on other persons.

At common law there was no obligation to fence, however in the settlement of Australia by the United Kingdom requirements to fence became established by law.

Generally, as people acquired interests in the land, they were responsible for the fencing. If, however, they fenced and then their neighbouring property also became alienated from the Crown, they could recover half the fencing costs from their neighbour.

As time has passed, much of the state has been developed. Much of the land owned by the state is now held as freehold title, and is subject to the 1953 Act.

This clause deals with the rest of the land which is owned by the State, but is generally held for public interest purposes. In relation to this land, limited by this clause, the obligations under the Bill do not apply. However, the holders of some interests in land (which is owned by the State) may be considered to be owners of land under the Bill.

Clause 18

Meaning of rural land, agricultural land, pastoral land, rural residential land and prescribed rural land

This clause defines these types of land uses, which are important for other clauses of the Bill. It is clear that a fence which suffices to divide 2 relatively small residential blocks can be quite different from the fence required for vast kilometres of pastoral land.

These definitions are needed so that this Bill will serve the needs of all Queenslanders.

Part 3 Neighbours' responsibilities

Clause 19

Ownership of dividing fence

This clause states the common law which is that a dividing fence is owned by the adjoining owners equally, to the extent that it is on the common boundary.

Clause 20

Liability for fencing work

This clause states that if there is no sufficient dividing fence between the 2 parcels of adjoining land, that each owner must contribute to the fencing work and that the contribution of each is to be decided in accordance with this part. This clause also provides that the fence must be built on the common boundary except in the circumstances specified in the clause.

*Clause 21***Contribution – generally**

This clause establishes that as a general rule the adjoining owners are each liable for half the cost of the fencing work required to have a sufficient fence. This rule will not apply where one adjoining owner wants a standard higher than a sufficient dividing fence. In this case, that owner is liable for any difference in cost. It should not be assumed that QCAT would allow a dividing fence to be built to one owner's specifications.

A sufficient dividing fence should be the bare minimum required to divide, so that the contribution required from each owner is kept to a minimum. This is a fair system which will provide equitably for the economically disadvantaged members of the community.

The example is given of trimming vegetation more than is necessary for the fencing work for a sufficient dividing fence.

*Clause 22***Contribution – parcel of prescribed rural land adjoining residential development**

As Queensland increasingly develops, it is more common that a parcel of rural land is adjacent to a residential development. Ordinarily the obligation to fence the boundary between the residential development and the rural land should be dealt with in the planning instrument. Where that is silent, this clause ensures that the owner of the parcel of rural land is only liable for the cost of a dividing fence sufficient for rural purposes for which the parcel of rural land has been used.

This kind of situation has arisen in the past and this clause will provide welcome certainty to the owners of a parcel of rural land as defined in the Bill.

It is not intended that the owner of agricultural land should be liable to contribute to a fence at all, if a fence has not been needed previously.

*Clause 23***Liability of lessee**

This clause provides for contribution by a lessee, if they have been given notice by the lessor.

*Clause 24***Contribution - particular State land**

This clause caters for the adjoining owner of excluded land. If the excluded land ceases to be excluded land, the adjoining owner can recover the relevant contribution to the fencing work for a sufficient dividing fence (already constructed) from a subsequent owner.

*Clause 25***Contribution – adjoining land separated by road**

Where pastoral land is bounded by a road, which is insufficient to restrain stock at all times, and the owner constructs a dividing fence on the boundary of the land and the road, contribution can be claimed from an adjoining owner if they make use of or obtain benefit from the fence.

*Clause 26***Damaging or destroying fence by negligent or deliberate act or omission**

There are occasions in which the dividing fence is damaged or destroyed by an adjoining owner or a person who enters land with their express or implied consent. This clause requires the owner to restore the fence to a reasonable standard, and if they do not, allows the adjoining owner to do so and recover the cost as a debt from the other adjoining owner.

*Clause 27***Attaching things to fence**

This section prevents material or substantial alteration of a dividing fence by the attachment of something to it. Examples are provided in the section, for instance, a carport, a shade sail, lattice or chicken wire. As the dividing fence is owned equally,

it is inappropriate for one adjoining owner to materially alter or damage it. If this occurs, the other adjoining owner can apply to QCAT for an order restoring the fence to a reasonable standard.

Clause 28

Constructing or making significant change to outdoor swimming pool fence.

This clause outlines the process which applies when a pool owner alters a dividing fence, which is used as a pool fence. In some circumstances notice of the proposed change is to be given to the adjoining owner and contribution to the cost of a sufficient dividing fence can be sought. In other cases it is not necessary to seek the neighbour's permission – including raising the height of the fence to 1.8 metres. These proposals are intended to promote the safety of children around swimming pools.

Clause 29

Urgent fencing work

There will be occasions in which it is necessary to undertake fencing work urgently. This provision outlines the circumstances in which an owner may act without notice to the other adjoining owner. When that occurs, the owner may recover the costs of carrying out the fencing work, by giving a notice to the adjoining owner.

Part 4 Process for obtaining contribution and resolving disputes

Division 1 Introduction

Clause 30

Overview

This clause confirms that adjoining owners have a responsibility to attempt to resolve issues about fencing work without a dispute. The clause describes the process of notice to be used if an owner wants an adjoining owner to contribute to fencing work and describes which disputes can be brought to QCAT.

Division 2 Notice for contribution to fencing work*Clause 31***Notice for contribution to fencing work**

This clause outlines how an owner can give written notice to an adjoining owner to contribute to the carrying out of fencing work on a dividing fence.

For the first time, there will be an approved form for the notice. During consultations for the preparation of this Bill, there was strong community support for the use of a notice in an approved form.

Because an owner might make a minor error or omission in compiling the notice, the clause provides that only substantial compliance is necessary.

The clause details certain important matters which must be included in the notice, including the description of the land.

If it is proposed that the cost of fencing work should be borne other than in equal proportions, then the proposed proportions should be included in the notice.

Unlike the 1953 Act, it is only necessary to attach one written quotation to the notice.

If within 1 month after the notice is given the adjoining owners have not agreed about the proposed fencing work or their contributions to it, then either owner may apply to QCAT. There is a time limit of 2 months after the notice is given within which to apply to QCAT.

Unless there is a need for urgent fencing work, neither adjoining owner can undertake fencing work until agreement is reached about the proposed fencing work or QCAT has made an order.

*Clause 32***Notice for contribution to urgent fencing work**

This clause provides for the written notice to be given when one adjoining owner has acted to carry out urgent fencing work. The process is very similar to the process for fencing work.

Division 3 Resolving Disputes*Clause 33***Jurisdiction**

This clause confers jurisdiction on QCAT to hear and decide any matter arising under this chapter. These matters are not to be dealt with as minor civil disputes.

A new jurisdiction is conferred upon QCAT to decide which of 2 or more fences on the boundary of adjoining lands is the dividing fence and to order the removal of the other fences.

Further, QCAT is given express jurisdiction where there is a fence other than a dividing fence on adjoining lands to order its removal if QCAT considers that its removal is necessary to allow fencing work for a dividing fence.

*Clause 34***Representation**

Because an owner may use a real estate agent to manage a property, specific provision is made that in fencing matters, a party may be represented by a real estate agent.

*Clause 35***Orders as to fencing work**

This clause outlines the kinds of orders QCAT may make in an application in relation to fencing work.

The clause continues to clarify that occupation of land on either side of a dividing fence as a result of a QCAT order that fencing work be carried out on a line other than the common boundary, does not affect title to or possession of the land.

*Clause 36***Sufficient dividing fence matters for QCAT consideration**

This clause lists some of the matters QCAT may consider in deciding whether a dividing fence is a sufficient dividing fence.

Most of these are in common with the *Dividing Fences Act 1991* (NSW).

A factor listed for consideration is any existing or previously existing dividing fence. As older suburbs are re-developed or become more fashionable, newer residents may desire a more elaborate fence than has previously been common in the area. In those circumstances, the fact that previously a short paling or chain wire fence has been used as a dividing fence is a highly relevant consideration in deciding what is sufficient. A related factor is the kind of dividing fence normally used in the area.

The clause also refers to whether the dividing fence is capable of being maintained by the owners. This is intended to refer both to the capacity to maintain the fence physically (an adjoining owner may be unable to undertake painting) and also to the adjoining owners' financial means. If a fence is erected which is beyond the financial means of one adjoining owner (for example, a pensioner) to maintain in the future, then it is not a sufficient dividing fence.

Where one adjoining owner seeks to have more than a sufficient dividing fence, QCAT must consider all of these objective factors.

Clause 37

Order in absence of adjoining owner

In some circumstances, an owner may be unable to give notice to the other adjoining owner. During the Review, some owners spoke of encountering absent adjoining owners who constantly change real estate agents and are unable to be located. In another case, the adjoining land was vacant and the adjoining owner resided overseas, making the giving of notice impractical.

In those circumstances, an owner may apply to QCAT for the relevant order authorising fencing work. QCAT must be satisfied that the owner has made reasonable inquiries but has been unable to locate the adjoining owner.

The clause allows an agent or implied agent to appear in the absence of the owner.

The owner who carries out the fencing work authorised by QCAT may at a later date give notice to the other adjoining owner and is entitled to seek contribution. The other adjoining owner is given an entitlement to apply to QCAT for a variation of the order.

The clause applies even though the adjoining owner or owner has ceased to own the relevant parcel of land.

Part 5 Process for dealing with unauthorised construction or demolition

Clause 38

Application before unauthorised construction or demolition

This clause provides relief in the situation where an owner apprehends that an adjoining owner intends to construct or demolish a dividing fence without authorisation.

The owner may apply to QCAT for an order preventing the construction or demolition and must give 3 days notice of the application.

Clause 39

Application after unauthorised construction or demolition

This clause provides relief if an owner constructs or demolishes a dividing fence without authorisation. An adjoining owner may apply to QCAT, upon 3 days notice. QCAT may make orders requiring the removal, modification or rectification of the fence and requiring the owner to bear the costs.

Part 6 Process if common boundary line not agreed

Clause 40

Process if common boundary line not agreed

This clause outlines the process to apply if the adjoining owners do not agree on the position of the common boundary line.

CHAPTER 3 Trees

Part 1 - Introduction

Clause 41

Overview

This chapter provides a new statutory remedy. Two principles underpin Chapter 3 of the Bill:

1. that the proper care and maintenance of a tree is the responsibility of the tree keeper; and
2. there is a presumption against the removal or destruction of a living tree.

Clause 42

What is outside scope of chapter

This chapter does not apply to trees situated on excluded land (which is defined in Clause 51 of the Bill) or land prescribed by regulation for the purpose of this clause.

Clause 43

What is outside scope of all or part of chapter

A regulation may provide that this chapter, or particular provisions of this chapter, do not apply to a tree that is situated on land within a particular local government area.

Clause 44

Requirements under other laws

If a person is required under this chapter to carry out work in relation to a tree, other than under a QCAT order, and another law requires a consent or authorisation to be given before the work may be carried out, the person must not carry out the work until the person obtains the consent or authorisation.

*Clause 45***Action in nuisance only with leave**

This clause provides that no action may be brought in nuisance for any damage or interference caused by a tree to which this Bill applies except with the leave of a court of competent jurisdiction.

Part 2 Interpretation*Clause 46***Meaning of *tree* and *situated***

The meaning of tree for the purposes of this Bill is defined in this clause. A regulation may prescribe any other plant to be a tree to which this chapter applies.

A tree is situated on land if the base of the tree trunk is, or was previously, situated wholly or mainly on the land. This clause may apply in a situation where a tree is removed prior to an application being filed by the neighbour, or an application is filed but not yet dealt with by QCAT and the tree keeper removes the tree.

*Clause 47***Meaning of *tree keeper***

The meaning of a tree keeper is central to this chapter of the Bill. A tree keeper includes the holders of the property interests specified in this clause.

*Clause 48***Meaning of *neighbour* and *land affected by a tree***

A neighbour is a person or other entity that is a registered owner of land affected by the tree or taken under another Act to be the owner, for this Bill, of land affected by the tree.

Land is land affected by a tree if branches from the tree overhang the land; or the tree causes injury to a person on the land, damage to the land or any property on the land, or there is substantial, ongoing and unreasonable interference with the owner's enjoyment of the land.

*Clause 49***Meaning of *relevant authority***

A relevant authority means a government department, a statutory body, a government owned corporation, or a local government.

*Clause 50***Meaning of *work and destroy***

Work for a tree in this chapter includes cutting any part of the tree including its branches or roots, netting the tree, destroying the tree, and removing the destroyed tree. Destroy means destroying the tree by any means and includes the removal of the tree and its stump.

*Clause 51***Meaning of *excluded land***

Excluded land for the purposes of the Bill is a parcel of land that is more than 5 hectares in size, unallocated State land or land prescribed by regulation. The explanatory notes for Clause 17 of the Bill provide background to the reasons for excluding unallocated state land.

Land less than five hectares in size is included in the Bill. This will capture large lots located in semi-rural and urban areas.

*Clause 52***Meaning of *vegetation protection order***

A vegetation protection order is an order made by a local government under a local law to provide for, or facilitate the protection of a tree in the local government area.

Part 3 Tree keeper's responsibilities

Part 3 sets out the responsibilities of a neighbour and tree keeper in relation to a tree to which this Bill applies.

*Clause 53***Responsibilities of a tree keeper**

A tree keeper is responsible for cutting and removing any branches of the tree that overhang a neighbour's land.

A tree keeper is also responsible for ensuring that the tree does not cause injury to a person; damage to a person's land and any property on the person's land (this may include property of a person on the neighbour's land); or substantial, ongoing and unreasonable interference with the person's enjoyment of the person's land.

Neighbours are encouraged to attempt to resolve an issue about a tree informally. QCAT can only make an order under this Bill if the neighbour has made a reasonable effort to reach agreement with the tree keeper.

If neighbours cannot reach an informal agreement about the tree then Part 5 provides for resolution of particular issues about overhanging branches and Part 6 provides for resolution of other issues about trees.

*Clause 54***More than 1 tree keeper**

If there is more than 1 tree keeper the liability of the tree keepers is joint and several.

Part 4 Common law right of abatement

This part reinforces that the common law right of abatement in relation to a tree is still available.

*Clause 55***Common law right of abatement**

The right of a landowner to exercise the common law right of abatement in relation to a tree is not affected by this Bill except to the extent that there is no obligation under this Bill for the adjoining landowner to return the cut branches, roots or fruit to the tree keeper.

Under the common law, property owners have the right to trim the branches or roots of a neighbour's tree to the common boundary line at their own expense, but they must return the cut branches, roots and fruit to the tree keeper.

The common law right of abatement is subject to vegetation protection orders and other orders imposed by local and State government for the protection of trees.

Part 5 Resolution of particular issue about overhanging branches

This part provides a process by which a neighbouring landowner can request the tree keeper to carry out the work on the tree at the cost of the tree keeper.

Clause 56

Scope of pt 5

This part applies to the situation where the branches of the tree overhang a neighbour's land and the neighbour only wants the branches cut and removed. A person must not cut branches under this part without obtaining consent or authorisation required by another law including a vegetation protection order issued by a local government for the area on which the tree is situated.

Clause 57

Overview

The Bill encourages the tree keeper and the adjoining landowner to resolve the issue about the tree informally.

The adjoining landowner has the option of exercising the common law right of abatement outlined in Clause 55, or using the formal resolution process set out in this part.

If the adjoining landowner chooses not to use the formal resolution process set out in this part and incurs costs in exercising the common law right of abatement, then he or she is unable to recover those costs.

*Clause 58***Notice for overhanging branches**

A neighbour may give a written notice to a tree keeper if branches of a tree are overhanging the neighbour's land.

The notice must ask the tree keeper to carry out the work on the tree within 30 days of the day the notice is given to the tree keeper, and give permission to the tree keeper or any contractor engaged by the tree keeper, to enter the neighbouring landowner's property to carry out the work on days and times to be agreed but within the notice period.

The notice must be accompanied by at least 1 written quotation specifying the estimated cost of carrying out the work on the tree and a copy of this part of the Bill. A tree keeper can obtain their own quote. They are not confined to the quote presented by the neighbour giving the notice.

Permission under subsection (2)(b) of this clause does not authorise the person to enter a dwelling on the neighbour's land.

A footnote to subsection (2)(b) of this clause reminds neighbours and tree keepers to consider liability and insurance implications when engaging contractors and giving permission to enter their land for the purposes of carrying out work on the tree.

*Clause 59***Tree keeper's response to notice**

This clause provides that within the 30 day notice period, the tree keeper must give written notice to the neighbour of 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 within the 30 day notice period.

*Clause 60***Resolution by neighbour**

This clause applies if the tree keeper does not cut and remove the overhanging branches within the notice period under clause 58(2)(a).

The neighbour may cut and remove the overhanging branches or arrange for someone else to cut and remove the overhanging branches, and is not obliged to return the branches or fruit from the tree to the tree keeper.

The tree keeper is liable for the reasonable expenses incurred by the neighbour involved in cutting and removing the overhanging branches

The neighbour may recover the amount of the reasonable expenses as a debt. A debt or liquidated demand of money, with or without interest, of up to the prescribed amount may be recovered in minor civil dispute proceedings under the QCAT Act.

Part 6 Resolution of other issues

Clause 61

Scope of pt 6

This part only applies in two situations. The first situation is if the relevant issue about a tree relates to branches of the tree overhanging a neighbour's land but the remedy sought by the neighbour is more than the cutting and removal of the branches as outlined in Part 5. An example of this might be where overhanging branches are regularly falling on the neighbour's property causing damage or fear of damage or injury.

The second situation where this part applies is if the relevant issue about a tree does not relate only to branches of the tree overhanging a neighbour's land. For example, the roots of the tree are causing damage to the neighbour's driveway or blocking underground pipes on the neighbour's property, or the tree has grown to such height or thickness that it is blocking light to the neighbour's property for most of the day.

Clause 62

Overview

The tree keeper and neighbour are encouraged to resolve the issue about the tree informally.

The neighbouring owner may exercise the common law right of abatement, or apply to QCAT for resolution of the dispute.

QCAT may make an order to resolve a dispute only if the neighbour has made a reasonable effort to reach agreement with the tree keeper. This is stated in clause 67(1)(a).

Clause 63

Jurisdiction

QCAT has jurisdiction to hear and decide any matter in relation to a tree in which it is alleged the tree has caused, is causing, or is likely to cause, injury to any person; or the tree has caused, is causing, or is likely in the near future to cause damage to the neighbour's land or any property on the neighbour's land; or the tree has caused, or is causing, substantial, ongoing and unreasonable interference with the enjoyment of the neighbour's land.

For the purposes of the Bill "in the near future" means within 12 months of the day the application is made. Proceedings under this chapter are not minor civil disputes.

The clause provides examples of what might constitute unreasonable interference.

Normal tree litter such as leaves, flowers, fruit, seeds or small elements of deadwood would ordinarily not provide the basis for ordering removal of or intervention with a tree. However, there may be cases where substantial and ongoing accumulation of tree litter may be found to be unreasonable by QCAT. For example, fine leaves from particular species of trees that intrude through mesh in gutters and water tanks may be shown to regularly block the gutters or spoil the tank water for drinking purposes.

Clause 64

Application to QCAT

A neighbour may apply to QCAT as provided under the QCAT Act for an order under clause 68.

*Clause 65***Giving a copy of an application**

At least 21 days before the date an application is to be heard, the neighbour must give a copy of the application to the tree keeper, any relevant authority that would be entitled to appear in proceedings in relation to the tree under clause 66 and any other person, including for example, an occupier of the tree keeper's land, that the neighbour has reason to believe would be affected by the order.

QCAT may waive the requirement to give a copy of the application, or may vary the minimum period before the hearing of the application by which the application must be served, if it considers it appropriate in the circumstances thus allowing the application to be dealt with in a timely manner. This power allows QCAT to expedite an application where a tree poses an imminent threat of injury to a person or damage to the neighbour's land or any property on the neighbour's land.

*Clause 66***Relevant authority may appear**

A relevant authority may appear in a proceeding under this part if carrying out the work on the tree would otherwise require the consent or authorisation of the relevant authority. An example of this might be where the local government has placed a vegetation protection order over the tree or where the tree is classed as a significant landscape tree. The local government might wish to make recommendations about the type of pruning that it would prefer if QCAT decided to make an order in relation to the tree, for example, pruning for recovery of a view.

*Clause 67***Requirements before order may be made**

QCAT may make an order under clause 68 only if it is satisfied that the neighbour has made a reasonable effort to reach agreement with the tree keeper; and that the application has been given in accordance with the requirements of clause 65, (except to the extent that a requirement under that section has been waived by QCAT); and that the tree which is the subject of the application is a tree to which this clause

applies; and the tree has caused, is causing, or is likely to cause injury to any person; or the tree has caused, is causing, or is likely in the near future to cause damage to the neighbour's land or property on the neighbour's land; or the tree has caused, or is causing substantial, ongoing and unreasonable interference with the enjoyment of the neighbour's land.

For a matter in which it is alleged the tree has caused, is causing, or is likely to cause an injury that is a severe allergic reaction, QCAT has jurisdiction to hear and decide the matter only if the person resides on the land adjoining the land on which the tree is situated. This clause clarifies that for applications to carry out work on a tree for severe allergic reactions, the tree must be situated in close proximity to the neighbour.

It is intended that if there is an alternative administrative process available for resolution of a dispute about a tree, then that process should be undertaken before an application is made to QCAT. For example, if a local government has local laws which would allow concerns about an alleged dangerous tree to be addressed, then the process under the local law should be used first to try to resolve the issue.

The words "in the near future" in this clause means within 12 months of the day the application is made.

Clause 68

Orders QCAT may make

QCAT must have regard to the matters set out in clause 72 when making an order mentioned in this clause, and in addition may have regard to the matters set out in clauses 73 and 74.

QCAT may make the orders it considers appropriate in relation to a tree to prevent injury to any person; to remedy restrain or prevent damage to the neighbouring landowner's land or property on the land; to remedy, restrain or prevent substantial, ongoing and unreasonable interference with the enjoyment of the neighbour's land.

Despite Section 178 of the *Property Law Act 1974*, QCAT may make an order under this clause that is intended to result in the access of light to land.

Without limiting powers of QCAT to make orders under this clause, a QCAT order may require or allow a tree keeper or neighbour to carry out work on a tree; require a survey be undertaken to define the location of a tree if there is doubt about its location in relation to the common boundary; require a person to make an application to obtain a consent or other authorisation from a relevant agency in relation to a tree; authorise a person to enter the tree keeper's land to carry out an order under this clause, including entering land to obtain a quotation for carrying out an order; require a tree keeper to pay compensation to a neighbour for damage to the neighbour's land and any property on the neighbour's land; require a report from an arborist of appropriate qualifications.

Clause 69

Scope of order to override other laws

QCAT may not make an order to carry out work on a tree if the work is prohibited under another Act.

If QCAT is satisfied the application is a genuine dispute it may order a person to carry out work on a tree if the work is restricted or prohibited under a local law or consent is withheld by a local government or a tree keeper under a vegetation protection order or other similar order.

Clause 70

Order in relation to a removed tree

QCAT may make an order under clause 68 even if the tree has been completely removed. For example a neighbour can apply for an order requiring the tree keeper to pay compensation or repair costs for damage caused by a tree even if the tree keeper has completely removed the tree since the damage occurred.

QCAT cannot make an order to remedy damage caused by a tree that has been completely removed if the tree keeper has sold the land on which the tree was situated since the damage was caused.

*Clause 71***Additional order if destruction or removal of tree ordered**

This clause acknowledges that trees have an important role in countering the effects of air pollutants in the atmosphere and should be replaced where possible.

If QCAT makes an order for the destruction or removal of a tree, QCAT may also order that the tree be replaced with a tree appropriate to the environment and surroundings, or a tree of a different maturity level. For example, a tree that is removed under a QCAT order may have been a mature tree of a particular species. QCAT can order that a tree of less maturity and of a different species replace the removed tree. QCAT can also order that the replacement tree be situated in a place other than the place where the destroyed or removed tree was originally situated. This might occur where the destroyed or removed tree was situated close to the common boundary line and overhanging the neighbour's house.

*Clause 72***Matters for QCAT consideration**

In deciding an application under this chapter, the primary consideration for QCAT is the safety of any person.

QCAT must also consider several other matters before deciding an application. These matters are listed in this clause and include the location of the tree in relation to the boundary of the land on which the tree is situated and any premises, fence or other structure affected by the location of the tree; whether carrying out work on the tree would require any consent or other authorisation under another Act and if so, whether the consent or authorisation has been obtained; whether the tree has any historical, cultural, social or scientific value (this might include a 'scar tree' which is a tree of cultural significance to aboriginal people. Aboriginal people caused scars on trees by removing bark for various purposes. The scars expose the sap wood on the trunk or branch of a tree); any contribution the tree makes to the local ecosystem and to biodiversity; any contribution the tree makes to the natural landscape and the scenic value of the land or locality; any contribution the tree makes to public amenity; any impact the tree has on soil stability, the water table or other natural features of the

land or locality; the type of tree including whether the species of tree is a pest or weed (however described) or falls under a similar category under an Act or local law.

This clause provides that no financial value or carbon trading value may be placed on a tree to which this Bill applies. Some local governments place monetary values on trees depending on the maturity level of the tree and the tree species. Sometimes these monetary tree valuations are assessed at many thousands of dollars. The process for valuing trees in the urban environment is unsettled and subject to varied and controversial valuing methods. This clause ensures that the object of the Bill, to provide a statutory remedy for a nuisance caused by trees growing in the neighbourhood, is not affected or frustrated by unsettled methods of calculating the monetary value of trees for asset purposes or carbon trading.

Clause 73

Additional matters QCAT may consider if injury or damage alleged

If the neighbour alleges the tree has caused, is causing, or is likely to cause injury to any person or damage to the neighbour's land or any property on the neighbour's land, QCAT may consider anything other than the tree that has contributed or is contributing, to the injury or damage or the likelihood of injury or damage. This may include any act or omission by the neighbour and the impact of any tree situated on the neighbour's land, and any steps taken by the tree keeper or the neighbour to prevent or rectify the injury or damage or the likelihood of injury or damage.

In making an order under clause 68 to carry out work that involves destroying a tree, QCAT may consider how long the neighbour has known of the injury or damage; any steps that have been taken by the tree keeper or the neighbour to prevent further injury or damage; anything other than the tree that may have caused, or contributed to, some or all of the injury or damage; any other matter QCAT considers relevant.

Clause 74

Additional matters QCAT may consider if unreasonable interference alleged

This clause sets out additional matters QCAT may consider if the neighbouring landowner alleges the tree has caused, or is causing, substantial, ongoing and

unreasonable interference with the enjoyment of the landowner's property. These matters include whether anything other than the tree has contributed or is contributing to the substantial, ongoing and unreasonable interference with the enjoyment of the land; any steps taken by the tree keeper or the neighbour to prevent substantial, ongoing and unreasonable interference with the enjoyment of the land; the size of the neighbour's land; and whether the tree was planted before or after the neighbour acquired the land.

Clause 75

Copy of order to be given to relevant authority

QCAT must give a copy of any order it makes in relation to a tree to the local government for the local government area in which the tree is situated and any relevant authority that appeared in the proceeding (which may include the local government for the area).

Clause 76

Failure to comply with order

A person must not fail to comply with a requirement imposed on the person under this chapter of the Bill unless there is a reasonable excuse. The maximum penalty for such failure is 1,000 penalty units. This serious penalty is meant to provide a real, financial deterrent to ignoring these requirements.

Clause 77

When order lapses or may be revoked

An order made under this chapter lapses 10 years after the day on which the order was made unless the order expresses otherwise.

QCAT may revoke an order it considers has been satisfied on application or on its own initiative.

Part 7 Register of QCAT orders*Clause 78***Register**

QCAT must keep a register of orders (other than obsolete orders) made under this chapter.

QCAT must keep the register in electronic form and in such a way that a search of the register for particular land will show the existence of any order (other than an obsolete order); the time for carrying out the order; and the person responsible for carrying out the order.

*Clause 79***Records to be kept by registrar**

QCAT must within 14 days of making an order under this chapter (other than an order revoking another order), enter into the register the prescribed information for the order. This is to facilitate searches by potential purchasers of land.

QCAT must within 14 days of making an order that revokes another order remove from the register the information for the other order.

*Clause 80***Entitlement to search register**

A person may search the register and obtain a certified copy of the register record in relation to any order made under this chapter.

A document purporting to be a certified copy of the register record is evidence of the register record.

Part 8 Sale or proposed sale of affected land*Clause 81***Definitions for pt 8**

In this part, *application* means an application made under this chapter that has not been decided, dismissed, struck out or withdrawn by QCAT. *Land affected by an application or order* means the land on which a tree is situated which is the subject of an application or order or other land mentioned in the application or order as affected by the tree.

An *order*, for a sale of a person's land affected by an order, means an order under this chapter (other than an obsolete order) requiring a person to carry out work in relation to a tree.

The meaning of *transfer day*, for land, means the day ownership of the land is transferred.

Clause 82

Person to give buyer copy of application or order

If a person intends to enter into a contract of sale for the land affected by an application or order, the person must give the buyer a copy of the application or order before the buyer enters into a contract of sale for the land, unless the person has a reasonable excuse. Maximum penalty for failure to do this is 500 penalty units.

Clause 83

Consequences if copy of application given

If, under clause 82, a person gives a copy of an application to a buyer, the buyer is joined as a party to the QCAT proceeding.

Clause 84

Consequences if copy of order given

If a person gives a copy of an order to a buyer under clause 82, then, on the transfer day, the buyer becomes, to the extent that the seller has not carried out the work required under the order, bound by the order as if the buyer were the person. Any period mentioned in the order for carrying out the order commenced on the transfer day of the contract of sale.

*Clause 85***Consequences before transfer if copy of application or order not given**

This clause sets out the buyer's rights if a copy of a QCAT order or application to QCAT is not given as required under this chapter, and outlines the process by which a buyer may terminate the contract of sale.

The buyer may terminate the contract at any time before the contract settles by giving a signed, dated notice of termination to the seller or the seller's agent.

The notice of termination must state that the contract is terminated under this clause.

If the contract is terminated, the seller must within 14 days after the termination refund any deposit paid under the contract to the buyer. Failure to do this may result in a maximum penalty of 200 penalty units.

If the seller instructs a person who holds the deposit to refund the deposit paid under the contract to the buyer that person must immediately refund the deposit to the buyer. Failure to do this may result in a penalty of up to 200 penalty units.

If the contract is terminated under the Bill, the seller and the person acting for the seller who prepared the contract, are liable to the buyer for the buyer's reasonable legal and other expenses incurred by the buyer in relation to the contract after the buyer signed the contract.

If more than 1 person is liable to reimburse the buyer, the liability of the persons is joint and several.

An amount payable to the buyer under this clause is recoverable as a debt in a court of competent jurisdiction.

*Clause 86***Consequences after transfer if copy of order not given**

This clause applies if a person selling land affected by an order, fails to give to the buyer a copy of the order before the buyer enters into a contract of sale for the land and has not, before the transfer day, carried out all the work the person is required to

carry out under the order. Despite ownership of the land being transferred to the buyer, the person remains liable to carry out the work required under the order.

Part 9 Assistance from local government

Clause 87

Local government may decide to carry out work

This clause applies if QCAT has made an order under this part requiring a tree keeper to carry out work on a tree within a specified period and the work has not been carried out within that period.

Nothing in this clause requires a local government to take any action. The local government may elect to carry out the work on the tree as ordered by QCAT.

If the local government decides to take action as requested by the neighbour then this clause sets out the process to be followed by the local government.

A neighbour may advise the local government of the local government area in which the tree is situated, but not less than 7 days after the end of the specified period, that the tree keeper has not carried out work on a tree as required by a QCAT order and request the local government of the local government area in which the tree is situated to act under this clause.

A person authorised by the local government (authorised person) may enter the tree keeper's land to inspect the tree to determine if the work has been carried out as required by the order and carry out the work if the work has not been carried out as required by the order.

Before an authorised person enters the tree keeper's land under this section, the local government must give the tree keeper at least 7 days' notice of the intention to enter the land.

Notice is not required if the tree keeper consents to entry, or entry to the land is required because of the existence or likelihood of a serious risk to safety, or entry is

required urgently and the chief executive of the local government has authorised in writing entry without notice.

An authorised person may not enter the tree keeper's land to inspect or carry out work on a tree without possessing an authority for this purpose. The authority must be produced, if required to do so by the tree keeper.

The costs incurred by the local government in carrying out the work and any administration fee charged by the local government are charges on the tree keeper's land under the *Local Government Act 2009*, section 95

Clause 88

Requirements of notice of intention to enter land

The notice of intention to enter the land of the tree keeper must be in writing. A copy of the relevant QCAT order and clause 87 must be attached to the notice. The notice must state the clause of this Bill under which the notice is given, the name of the tree keeper to whom it is given, the land to which the notice applies, the purpose of the entry and the day on which the authorised person is to enter the land.

Clause 89

Requirements of authority to enter land

The authority to enter the tree keeper's land must be in writing and be signed by the chief executive of the local government. The authority must state that it is issued under the Bill, the name of the person to whom it is issued, the land to which the authority applies, that the person has authority to enter the land, the purpose for which the land is being entered, whether the person has authority to carry out any work required under an order and the date, not more than 90 days from the date of the authority, on which it expires.

Chapter 4 General

Part 1 Provisions of general application

*Clause 90***Substantial compliance is sufficient**

Substantial compliance with the terms of any agreement or order referred to in this Bill is sufficient for the purposes of this Bill.

*Clause 91***Giving documents**

A document may be given to a person by delivering the document to the person personally, or by delivering the document to the person's address and leaving the document with a person apparently above the age of 14 years or by forwarding the document by prepaid post to the person's address.

Evidence of giving of a document may be given orally or by affidavit.

A justice of the peace is authorised to take and receive an affidavit whether or not any matter to which the affidavit relates is pending in any court or QCAT.

If there are 2 or more joint owners of land and a person is unable to give every owner the document, the document is deemed to have been given to all joint owners if the person gives the document to at least 1 of the joint owners.

The meaning of *address* for an owner of land is the usual or last known place of residence or business for the owner and includes the owner's address according to the records held by the local government of the local government area in which the tree is situated. The meaning of *document* is a notice or order made under this Bill. The *relevant local government* for an owner of land means the local government of the local government area in which the land is situated.

*Clause 92***Description of land etc. in notice**

The description of any land, fence, line, boundary or tree in a notice under this Bill is sufficient if it allows no reasonable doubt as to which land, fence, line, boundary or

tree is concerned or if it is shown that the person served with the notice knew the relevant land, fence, line, boundary or tree.

Clause 93

Right to enter land for work under this Act

A person who intends to carry out work under this Bill (including the person's employees or agents) may, at any reasonable time enter the land for such purpose.

However this clause does not authorise the person to enter a dwelling on the land and the person may only enter land if the owner of the land, and any lessees of the land of which the person is aware, is given at least 7 days' notice of the person's intention to enter the land to carry out the work.

This clause does not apply if a person gives permission under clause 58.

Part 2 Miscellaneous

Clause 94

Regulation making power

The Governor in Council may make regulations under this Bill.

Clause 95

Approved forms

The chief executive may approve forms for use under this Bill.

Clause 96

Review of s28 (Constructing or making significant change to outdoor swimming pool fence)

The Minister must review clause 28 to decide whether the purpose of this clause remains valid and whether the terms of the clause are appropriate for achieving that

purpose set out in the clause. The review is to be undertaken as soon as possible after the period of 5 years from the commencement of clause 28. The Minister must table the report in the Legislative Assembly on the outcome of the review within 6 months after the end of the 5 year period.

Chapter 5 Saving and transitional provisions

Clause 97

Notices, proceedings and orders under Dividing Fences Act 1953

The repealed 1953 Act applies in relation to an existing notice, a proceeding in relation to an existing notice, an existing proceeding or an existing order as if this Bill had not been enacted.

This clause defines certain words for the purpose of this clause.

Clause 98

References to Local Government Act 2009

This clause applies for a reference in this Bill to the *Local Government Act 2009* or a thing under that Act (the local government reference) until the *Local Government Act 2009*, section 288, which repeals the *Local Government Act 2009*, commences.

The local government reference may, if the context permits be taken as a reference to the *Local Government Act 1993* or the thing under that Act that substantially corresponds to the reference.

Chapter 6 Repeal

Clause 99

Repeal of Dividing Fences Act 1953

The 1953 Act is repealed.

Chapter 7 Amendment of Acts

Part 1 Amendment of this Act

Clause 100

Act amended

This part amends this Act.

Clause 101

Amendment of long title

The long title is amended as set out in this clause.

Part 2 Amendment of Building Act 1975

Clause 102

Act amended

This part amends the *Building Act 1975*.

Clause 103

Amendment of s246 (Apportionment of cost of constructing dividing fence)

Amendments have been made to s246 of the *Building Act 1975* replacing references to the 1953 Act with references to the *Neighbourhood Disputes Resolution Act 2010*, and replacing reference to a Magistrates Court with reference to QCAT.

A note is inserted referring to clause 28 of the *Neighbourhood Disputes Resolution Act 2010* which requires consultation with, and notice to an adjoining owner before constructing or significantly changing an outdoor swimming pool fence that is a dividing fence or part of a dividing fence.

Clause 104

Amendment of sch 2 (Dictionary)

The reference to the 1953 Act in Schedule 2 is omitted and replaced with *Neighbourhood Disputes Resolution Act 2010*.

Part 3 Amendment of Land Act 1994

Clause 105

Act amended

This part amends the *Land Act 1994*.

Clause 106

Replacement of s156 (Application of Dividing Fences Act)

This clause ensures that the 1953 Act applies to leases and licensees issued under the Land Act 1994 or the repealed act, as if the lessees or licensees were owners under the 1953 Act.

Part 4 Amendment of other Acts

Clause 107

Minor amendment of Acts

Schedule 1 amends the Acts it mentions.

Schedule 1 – Minor amendment of Acts

Schedule 1 amends the Acts it mentions to replace references to the 1953 Act with references to this Bill, or to refer to the 1953 Act as repealed.

Schedule 2 Dictionary

This schedule defines terms used in the Bill.