

Neighbourhood disputes

Resolve neighbourhood disputes about trees

A new leaf!

There's no reason anymore to get hot under the collar if that tree next door is causing you grief. Queenslanders are lucky to live with an abundance of nature – but sometimes cohabitation with all that beauty needs a little pruning back, or even removal or relocation.

Neighbourhood disputes can arise when the guidelines are unclear:

- Who is responsible for a tree?
- What is a reasonable/unreasonable request?
- How do neighbours reach a compromise over a beloved, but troublesome, tree?

Following is a guide to new laws which help sort out these and other issues, providing a clear path to get to the “root” of the problem!

New laws for trees

The *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (the Act) commenced on 1 November 2011.

The Act:

- provides a clear definition of the word “tree”
- it specifies that proper care and maintenance of trees are the responsibility of the “tree-keeper” (in most cases, the owner of the property where the tree is located is the tree-keeper, see below for further information)
- responsibility is placed on the tree-keeper to ensure that their neighbour's land is not affected by a tree growing on the tree-keeper's land
- if a neighbour wants the tree-keeper to cut back branches of their tree hanging over a property boundary, they can serve a *Notice for removal of particular overhanging branches* upon the tree-keeper. This notice can only be given if the tree overhangs the boundary more than 50cm and its branches are less than 2.5m above the ground. If the neighbour does not respond to this notice, they can proceed to have a professional lopper cut back the tree and recover the costs from the tree-keeper up to a maximum of \$300 per year.

Exclusions under the Act

The Act does not apply to:

- trees situated on rural land
- land that is more than four hectares in size
- land owned by a local government that is used as a public park.

The Act excludes trees planted or maintained for certain purposes such as for commercial purposes or as a condition of a development approval.

Who is a “tree-keeper”?

The Act defines a tree-keeper as the holder of the property interest. In most cases, this will be the registered owner of a lot recorded in the freehold land register.

The state is not considered a tree-keeper for the purposes of the Act in respect of certain types of land, for example a national park.

The body corporate for the common property in a community titles scheme and the body corporate for the common property in a plan are tree-keepers.

Responsibilities of a ‘tree-keeper’

A tree-keeper is responsible for:

- cutting and removing any branches of the tree which overhang a neighbour's land, provided there is no vegetation protection order protecting the tree
- ensuring that a tree does not:
 - cause serious injury to a person on the neighbour's land
 - serious damage to a neighbour's property
 - unreasonably interfere with a person's use and enjoyment of their land.

Should a tree have more than one tree-keeper then the responsibilities and liabilities will be shared equally between them.

Most-asked questions about tree-keeping

Who is a neighbour?

A neighbour is a person or entity that is the registered owner of the land affected by a tree.

Land affected by a tree

Land is 'land affected by a tree' if:

- branches from the tree overhang the land
- the tree causes or is likely to cause within the next 12 months:
 - serious injury to a person on the land
 - serious damage to the land or property on the land
 - substantial, ongoing and unreasonable interference with the neighbour's use and enjoyment of the land.

Unreasonable interference with a neighbour's land

Some examples may include:

- interference with television or satellite reception
- interference with the proper functioning of solar panelling (e.g. if a tree is casting a shadow over the panels)
- obstructing sunlight to the windows or roof of a property
- obstructing a view which existed before the neighbour took possession of the land.

Giving a tree-keeper notice to trim overhanging branches

A neighbour can give a tree-keeper 30 days written notice, using the Act's *Notice for removal of particular overhanging branches* (available at www.neighbourhooddisputes.qld.gov.au) to cut and remove the overhanging branches at the tree-keeper's cost. This notice can only be given if the tree overhangs the boundary more than 50cm and its branches are less than 2.5m above the ground. The tree-keeper can lop the tree themselves or engage a contractor. Vegetation protection orders on the tree made by the state or local council must not be breached.

Lack of response by tree-keeper to the Notice

Should the tree-keeper not respond within 30 days to the *Notice for removal of particular overhanging branches*, the neighbour may cut and remove the overhanging branches or arrange for someone else to do so, provided there is no vegetation protection order placed over the tree.

The tree-keeper will be liable for all reasonable expenses incurred by the neighbour for cutting and removing the branches to a maximum of \$300 per year (no matter how many trees).

Resolving issues

Neighbours who disagree over trees are encouraged to discuss the matter themselves. Should they be unable to agree, a professional mediator may be able to help. Mediators are an impartial third party and can facilitate a structured process. Mediation is quicker, easier and often cheaper than taking legal action.

Contact your nearest Dispute Resolution Centre to find out more or visit www.justice.qld.gov.au/drb

South Queensland	07 3738 7000
Wide Bay	07 4120 6708
Central Queensland	07 4887 1760
Mackay Whitsunday	07 4889 8402
North Queensland	07 4417 8141
Far North Queensland	07 4037 2600

Neighbours who are still unable to reach agreement through mediation can apply to have their disagreement heard by the Queensland Civil and Administrative Tribunal (QCAT). Applying to QCAT should be the final resort if neighbours are unable to reach a solution through mediation. QCAT actively resolves tree and fence disputes in a way that is independent, efficient, expert, accessible and flexible. Visit www.qcat.qld.gov.au for more information about how to make an application involving a tree or dividing fence matter.

1. My tree overhangs my neighbour's land. Can my neighbour cut the overhanging branches?

When the branches of your tree overhang the common boundary, your neighbour can lop the branches to the boundary line (subject to any applicable vegetation protection orders). Your neighbour can decide whether or not to return the lopped branches to you.

2. My neighbour rents their property. Can he or she still tell me to lop my tree?

Under Chapter 3, Part 4 of the Act, which allows a neighbour to give a *Notice for removal of overhanging branches*, the definition of neighbour does not include occupiers and only applies to the registered owner of the land.

Nevertheless, an occupier can still apply to QCAT for an order about a tree where they can show that their landlord has refused to take any action about a tree that is affecting the land.

3. There are a lot of overhanging trees in my street which grow across boundaries. Who is deemed the responsible tree-keeper?

A tree-keeper, under the Act, is the person (or entity in the case of a body corporate) that holds the property interest in the land on which the tree is situated. A tree is situated on the land if the base of the tree trunk is (or was previously in the case of a tree that has now been removed) situated wholly or mainly on the land. In most cases the tree-keeper will be the registered owner of freehold land.

The State is not considered a tree-keeper under the Act where the tree is situated on certain types of land, for example, a national park.

In those cases where a tree has more than one tree-keeper, the responsibilities and liabilities will be shared equally between them.

4. When can I give a 'Notice for removal of overhanging branches' to my neighbour?

The notice system in Chapter 3, Part 4 of the Act only applies to minor encroachments; that is, when all you are seeking is the trimming of tree branches that are 2.5m or less above ground and overhang the boundary by more than 0.5m. You can give a tree-keeper 30 days written notice to remove the overhanging branches at the tree-keeper's cost.

You should attach a quote for the cost of the work to the notice and you must give the tree-keeper (or their contractor) permission to enter your land to do the work.

Should the tree-keeper not respond to the notice, you may cut and remove the overhanging branches or hire a contractor to do that for you. The tree-keeper will be liable for all reasonable expenses that you incurred when cutting and removing the branches up to a maximum of \$300 per year.

Note: Before cutting trees, enquiries should always be made to the local council about any applicable vegetation protection orders.

5. I can't reach the overhanging branches to trim them back. They're more than 2.5 metres above the ground. What do I need to do?

When tree branches are more than 2.5m above the ground, and overhang by at least 0.5m, you can apply to QCAT for an order.

It is important to note that the right to make an application to QCAT is not restricted to any height of the branches, except in the situation where you are seeking an application about interference that is an obstruction of sunlight or a view. In this case the tree (not the branches) must be at least 2.5m above the ground.

6. Are all trees covered by the Act?

No. The Act does not apply to:

- trees situated on rural land
- trees situated on land that is more than four hectares in size
- trees situated on land that is owned by a local government and used as a public park
- trees that were planted or maintained for certain purposes, such as for commercial purposes or as a condition of a development approval.

The word 'tree' under the Act includes any woody, perennial plant or any plant resembling a tree in form and size. It also includes a bare trunk, a stump rooted in the land, and a dead tree.

7. When and how should I apply to QCAT for an order?

You can apply to QCAT for an order about trees if your land is affected by a tree – for example:

- your land is affected by a tree other than because of overhanging branches i.e. if tree roots are interfering with underground pipes or
- the tree is causing a substantial, ongoing and unreasonable interference with the use and enjoyment of your land or
- you are seeking the cutting and removal of branches overhanging your land and the notice system does not apply.

Before making an application to QCAT please read Tree Dispute Resolution (available at <http://www.qcat.qld.gov.au/matter-types/tree-disputes>) and go through the Application Checklist for Tree Dispute Resolution (available at <https://www.qcat.qld.gov.au/resources/publications>).