

## CAN I CHOP DOWN MY NEIGHBOUR'S TREE?

The *Neighbourhoods Dispute Resolution Act 2011* came into force in November 2011.

The Act repeals the *Dividing Fences Act 1953*, and replaces it with the provisions of chapter 2 of the new Act, which is in substantially the same terms. Broadly, the Act sets out a mechanism for dealing with the replacement of dividing fences. Provided certain procedures are followed, each neighbour is required to contribute jointly towards the fence, and any disputes are to be resolved by means of an application to the Queensland Civil and Administrative Tribunal (QCAT). "Fence" is defined very broadly, and in effect includes any barrier, including a water course, between the land of adjoining owners. However, retaining walls and walls that are a part of a house, garage or any other building are expressly excluded from the definition of fence".

Where the Act breaks new ground is dealing with overhanging trees. There has always been a common law right of abatement, meaning that a neighbour can remove branches overhanging into his or her garden, but must return any branches so removed to the land on which the tree grows; in other words, if you have removed the branches you must throw them back over the fence!

The new Act reserves this right but removes the obligation to return branches, although it is still an option.

- The Act helpfully defines a tree to include any woody perennial plant, or any plant resembling a tree in form or size (e.g. bamboo). A tree need not be alive to come under this section. S45 states that a tree does not include a plant prescribed under a regulation not to be a tree; in other words, a tree is not a tree if the regulation says that it is not!
- Land is affected by a tree if branches overhang the land, or the tree has caused, or is likely to cause in the next 12 months (although there are no guidelines on how to foretell the future) serious injury to a person on the land, serious damage to the land, or substantial ongoing and unreasonable interference with the neighbour's use or enjoyment of the land. Remedies extend to all land adjoining the land on which the tree is (as one might expect) but also to land that would adjoin the land if it were not separated by a road. Not only can your immediate neighbours now complain about your trees but so can those over the road.
- The Act also introduces the wonderful term of "tree-keeper"; this, in simple terms, means the owner, lessee or body corporate in respect of the land. That person is responsible for cutting or removing overhanging branches and preventing the mischief referred to above.

- If the neighbour does not wish to indulge in self help by removing the branches, the branch is both encroaching at least 50 centimetres onto the neighbour's land and is no more than 2.5 metres above the ground, the neighbour can give the tree keeper written notice requiring the branch to be cut and removed within 30 days. If it is not removed in that time, the neighbour can remove it and seek reimbursement of the cost of up to \$300.00 from the tree-keeper.
- If matters cannot be resolved this way, the neighbour can apply to QCAT for an order that the branches be removed. There are numerous procedural requirements, but QCAT can make any order it considers appropriate, including the removal of the tree.
- If the tree-keeper still declines to remove the tree, the neighbour can ask the local council to take action to do so.

We suspect that in most cases the "self help" option will be used. However, the QCAT procedure does avoid the need for what could be a lengthy application to the District Court seeking an injunction for nuisance or other damages.

If we can be of any assistance to you in resolving any form of neighbour dispute please contact us on [reception@oneilslawyers.com.au](mailto:reception@oneilslawyers.com.au) or 07 3849 6263 to discuss the matter.