1. In May 2007, the Review of the Neighbourly Relations was launched. A discussion paper and online survey were released on the *Dividing Fences Act 1953.* The overwhelmingcommunity response was that the current Act needs to be modernised in language and many sections clarified (e.g. pool fences, retaining walls, meaning of sufficient fence, and destruction or alteration of a fence by a neighbour). The Neighbourhood Disputes Resolution Bill 2010 addresses the great majority of these issues.
2. In July 2008, two discussion papers were released entitled “Trees” and “Resolving neighbourhood disputes”. Most stakeholders found the common law to be inadequate to deal with a nuisance caused by a neighbour’s tree. The community held strong views that the tree keeper should be responsible for the proper care and maintenance of a tree. The Bill reflects this widely held view. It places responsibility for the care and maintenance of a tree on a tree keeper and introduces new remedies for neighbours in relation to trees.
3. The common law right of abatement remains available to neighbours. However, the Bill alters the common law requirement that the cut branches, roots and fruit encroaching onto the neighbour’s land must be returned to the tree owner. The Bill provides that a neighbour is no longer compelled to return to the tree owner the branches, roots or fruit which have been cut to the boundary line. This part of the common law of abatement often caused confusion and dispute amongst neighbours and is now addressed in the Bill.
4. The Bill contains a formal resolution process placing an obligation on a tree keeper to prune branches overhanging onto his or her neighbour’s land where the neighbour gives notice to the tree keeper. If the tree keeper does not respond to the notice, or cut and remove the overhanging branches within the notice period, the neighbour is able to recover costs for pruning the tree as a debt to a maximum of $300.00 per annum. This section is subject to vegetation protection orders or other similar orders which protect the tree.
5. The Bill places responsibility on the tree owner for ensuring that the tree does not cause serious injury to a person, serious damage to an adjoining landowner’s land or substantial, ongoing and unreasonable interference with the adjoining landowners enjoyment of their land.
6. A new statutory framework gives the Queensland Civil and Administrative Tribunal (QCAT) jurisdiction to make orders on the application of a land owner for the removal or pruning of a tree in circumstances where the applicant can demonstrate the tree caused or is likely to cause serious injury, serious damage, or unreasonable interference with the adjoining landowners enjoyment of their land.
7. Before deciding an application, QCAT must consider certain matters including whether the tree has any historical, cultural, or social value and any contribution the tree makes to local eco systems and to biodiversity. There is a presumption against removal or destruction of a living tree and any tree that is ordered to be removed may be replaced with another tree.
8. Cabinet approved the introduction of the Neighbourhood Disputes Resolution Bill 2010 into the Legislative Assembly.
9. Attachments
* [Neighbourhood Disputes Resolution Bill 2010](Attachments/NeighDisResB10.pdf)
* [Explanatory Notes](Attachments/NeighDisResB10Exp.pdf)
* [Results of Consultation](Attachments/Results%20of%20Consultation.docx)