



# **Neighbourhood Disputes (Dividing Fences and Trees) Act 2011**

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Queensland

# Neighbourhood Disputes (Dividing Fences and Trees) Act 2011

## Contents

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		Page
<b>Chapter 1</b>	<b>Preliminary</b>	
1	Short title .....	7
2	Commencement .....	7
3	Objects of Act .....	7
4	Definitions .....	7
5	Relationship with other Acts or laws .....	8
6	Act binds all persons .....	8
<b>Chapter 2</b>	<b>Dividing fences</b>	
<b>Part 1</b>	<b>Introduction</b>	
7	Overview .....	8
8	Application of chapter .....	9
9	Non-application of provisions to barrier of regulated pool .....	9
10	No effect on agreements or particular law .....	10
<b>Part 2</b>	<b>Interpretation</b>	
11	Meaning of fence .....	10
12	Meaning of dividing fence .....	11
13	Meaning of sufficient dividing fence .....	11
14	Meaning of owner for land .....	12
15	Meaning of adjoining owners and adjoining land .....	13
16	Meaning of fencing work .....	14
17	Meaning of authorisation .....	14
18	Meaning of agricultural land, pastoral land, prescribed rural land and residential land .....	15
<b>Part 3</b>	<b>Neighbours' responsibilities</b>	
19	Ownership of dividing fence .....	15
20	Liability for fencing work .....	15

Contents

---

21	Contribution between adjoining owners—generally . . . . .	16
22	Contribution—parcel of prescribed rural land adjoining residential development . . . . .	16
23	Contribution—prescribed land adjoining residential development . . . . .	17
24	Liability of lessee . . . . .	17
25	Contribution—particular State land . . . . .	18
26	Contribution—negligent or deliberate act or omission . . . . .	19
27	Attaching things to a dividing fence . . . . .	20
28	Urgent fencing work . . . . .	20
29	Agreement does not affect title or possession . . . . .	20
<b>Part 4</b>	<b>Process for obtaining contribution and resolving disputes</b>	
<b>Division 1</b>	<b>Introduction</b>	
30	Overview . . . . .	21
<b>Division 2</b>	<b>Notice to contribute</b>	
31	Notice to contribute for fencing work . . . . .	22
32	Notice to contribute for urgent fencing work . . . . .	23
<b>Division 3</b>	<b>Resolving disputes</b>	
33	Jurisdiction . . . . .	24
34	Representation . . . . .	24
35	Orders about carrying out fencing work . . . . .	24
36	Sufficient dividing fence matters for QCAT consideration . . . . .	25
37	Application for order in absence of adjoining owner . . . . .	26
<b>Part 5</b>	<b>Process for dealing with unauthorised construction or demolition</b>	
38	Application before unauthorised construction or demolition . . . . .	27
39	Application after unauthorised construction or demolition . . . . .	28
<b>Part 6</b>	<b>Process if common boundary not agreed</b>	
40	Process if common boundary not agreed . . . . .	28
<b>Chapter 3</b>	<b>Trees</b>	
<b>Part 1</b>	<b>Introduction</b>	
41	Overview . . . . .	30
42	Trees to which this chapter applies . . . . .	30
43	Requirements under other laws . . . . .	31
44	Action may be taken in relation to more than 1 tree . . . . .	32
<b>Part 2</b>	<b>Interpretation</b>	
45	Meaning of tree . . . . .	32
46	When is land affected by a tree . . . . .	33

47	When is a tree situated on land . . . . .	33
48	Who is a tree-keeper . . . . .	33
49	Who is a neighbour . . . . .	34
50	Meaning of work . . . . .	35
51	Meaning of destroy . . . . .	35
<b>Part 3</b>	<b>Responsibilities, liabilities and rights</b>	
52	Responsibilities of a tree-keeper . . . . .	35
53	More than 1 tree-keeper . . . . .	36
54	Common law right of abatement . . . . .	36
<b>Part 4</b>	<b>Removal of overhanging branches</b>	
55	Application of this part . . . . .	37
56	Overview . . . . .	37
57	Notice for particular overhanging branches . . . . .	37
58	Resolution by neighbour . . . . .	39
<b>Part 5</b>	<b>QCAT orders to resolve other issues about trees</b>	
<b>Division 1</b>	<b>Preliminary</b>	
59	Application of this part . . . . .	40
60	Overview . . . . .	40
61	Jurisdiction . . . . .	40
<b>Division 2</b>	<b>Applying to QCAT</b>	
62	Neighbour may apply to QCAT . . . . .	41
63	Giving a copy of an application . . . . .	41
<b>Division 3</b>	<b>Making an order</b>	
64	Government authority may appear . . . . .	42
65	Requirements before order may be made . . . . .	42
66	Orders QCAT may make . . . . .	43
67	Scope of order to override other laws . . . . .	44
68	Order in relation to a removed tree . . . . .	45
69	Additional order if destruction or removal of tree ordered . . . . .	45
<b>Division 4</b>	<b>Matters for QCAT consideration</b>	
70	Application of div 4 . . . . .	46
71	Safety . . . . .	46
72	Removal or destruction of living tree to be avoided . . . . .	46
73	General matters to consider . . . . .	46
74	Other matters to consider if serious injury or damage alleged . . . . .	47
75	Other matters to consider if unreasonable interference alleged . . . . .	48

Contents

---

<b>Division 5</b>	<b>Matters following the making of an order</b>	
76	Copy of order to be given to government authority . . . . .	49
77	Failure to comply with order . . . . .	49
78	When order lapses or may be revoked . . . . .	49
<b>Part 6</b>	<b>Register of QCAT orders</b>	
79	Register . . . . .	49
80	Records to be kept by registrar . . . . .	50
81	Entitlement to search register . . . . .	50
<b>Part 7</b>	<b>Sale or proposed sale of affected land</b>	
82	Definitions for pt 7 . . . . .	51
83	Person to give buyer copy of application or order . . . . .	51
84	Consequences if copy of application given . . . . .	51
85	Consequences if copy of order given . . . . .	51
86	Consequences before transfer if copy of application or order not given 52	
87	Consequences after transfer if copy of order not given . . . . .	53
<b>Part 8</b>	<b>Assistance from local government</b>	
88	Local government may decide to carry out work . . . . .	53
89	Requirements of notice of intention to enter land and notice of entry to land . . . . .	55
90	Requirements of authority to enter land . . . . .	56
<b>Chapter 4</b>	<b>General</b>	
<b>Part 1</b>	<b>Provisions of general application</b>	
91	Substantial compliance is adequate . . . . .	57
92	Giving documents . . . . .	57
93	Descriptions in notice . . . . .	58
94	Right to enter land for work under this Act . . . . .	58
<b>Part 2</b>	<b>Miscellaneous</b>	
95	Regulation-making power . . . . .	59
96	Approved forms . . . . .	59
97	Review of Act . . . . .	59
<b>Chapter 5</b>	<b>Transitional provision for Act No. 25 of 2011</b>	
98	Notices, proceedings and orders under Dividing Fences Act 1953	60
<b>Chapter 6</b>	<b>Repeal</b>	
99	Repeal of Dividing Fences Act 1953 . . . . .	60
<b>Chapter 7</b>	<b>Transitional provisions for Economic Development and Other Legislation Amendment Act 2019</b>	

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100	Definitions for chapter .....	61
101	Particular notices given under s 57 .....	61
102	Particular applications under s 62 .....	61
103	Particular orders made by QCAT .....	62
<b>Schedule</b>	<b>Dictionary</b> .....	<b>63</b>





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# Neighbourhood Disputes (Dividing Fences and Trees) Act 2011

**An Act to deal with matters about dividing fences and trees**

## Chapter 1 Preliminary

### 1 Short title

This Act may be cited as the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

### 2 Commencement

This Act commences on a day to be fixed by proclamation.

### 3 Objects of Act

The objects of this Act are—

- (a) to provide rules about each neighbour's responsibility for dividing fences and for trees so that neighbours are generally able to resolve issues about fences or trees without a dispute arising; and
- (b) to facilitate the resolution of any disputes about dividing fences or trees that do arise between neighbours.

### 4 Definitions

The dictionary in the schedule defines particular words used in this Act.

## **5 Relationship with other Acts or laws**

Unless otherwise expressly provided for in this Act, this Act does not affect the operation of another Act or law.

*Example—*

The *Electricity Act 1994*, the *Transport Infrastructure Act 1994* and the *Vegetation Management Act 1999* also contain provisions about trees.

## **6 Act binds all persons**

This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth.

# **Chapter 2 Dividing fences**

## **Part 1 Introduction**

### **7 Overview**

- (1) A sufficient dividing fence is required between 2 parcels of land if an adjoining owner requests a dividing fence.
- (2) Generally, neighbours must—
  - (a) contribute equally to the building and maintaining of a sufficient dividing fence; and
  - (b) not attach something to a dividing fence that materially and unreasonably alters or damages it.
- (3) This chapter encourages neighbours to attempt to resolve a dividing fence issue informally.
- (4) However, if neighbours can not resolve a dividing fence issue, the dispute may be taken to QCAT for resolution.

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## 8 Application of chapter

- (1) Subject to subsections (2) to (4), this chapter applies to the following—
  - (a) land recorded in the freehold land register;
  - (b) land subject to a lease or licence under the *Land Act 1994*;
  - (c) land subject to an occupation permit or stock grazing permit under the *Forestry Act 1959*, section 35;
  - (d) land subject to a stock grazing permit under the *Nature Conservation Act 1992*.
- (2) This chapter does not apply to the following—
  - (a) a stock route within the meaning of the *Stock Route Management Act 2002*;
  - (b) South Bank public land within the meaning of the *South Bank Corporation Act 1989*;
  - (c) a State plantation forest, including a licence area in a State plantation forest;
  - (d) land prescribed under a regulation.
- (3) For adjoining land consisting of 2 parcels of agricultural land, this chapter does not apply to each parcel of land for the common boundary between the parcels of land.
- (4) To remove any doubt, it is declared that this chapter does not apply to unallocated State land.

## 9 Non-application of provisions to barrier of regulated pool

- (1) Parts 3 to 6 do not apply in relation to a fence, or a part of a fence, that is a barrier of a regulated pool.

*Note—*

See the *Building Act 1975*, chapter 8, part 2A.

- (2) In this section—

*regulated pool* means a regulated pool under the *Building Act 1975* as if a reference to a regulated pool in this section were a reference to a regulated pool in chapter 8, part 2A of that Act.

## 10 No effect on agreements or particular law

- (1) This chapter does not affect—
  - (a) a covenant or agreement, other than an agreement under this chapter, made between adjoining owners about a dividing fence before or after the commencement of this section; or
  - (b) a by-law under the *Body Corporate and Community Management Act 1997* or the *Building Units and Group Titles Act 1980* about a dividing fence; or
  - (c) a law about retaining walls or rights of support, including easements of support.
- (2) To remove any doubt, it is declared that this chapter does not prevent the State, a local government or other entity from entering into an agreement to contribute to fencing work.

## Part 2 Interpretation

### 11 Meaning of *fence*

- (1) A *fence* is a structure, ditch or embankment, or a hedge or similar vegetative barrier, enclosing or bounding land, whether or not continuous or extending along the entire boundary separating the land of adjoining owners, and includes—
  - (a) a gate, cattle grid or apparatus necessary for the operation of the fence; and
  - (b) a natural or artificial watercourse separating the land of adjoining owners; and
  - (c) a foundation or support built solely for the support and maintenance of the fence.

- (2) However, a *fence* is not—
  - (a) a retaining wall; or
  - (b) a wall that is part of a house, garage or other building.

## 12 Meaning of *dividing fence*

- (1) A *dividing fence* means a fence on the common boundary of adjoining lands.
- (2) A fence separating the land of adjoining owners constructed on a line other than the common boundary is also a dividing fence if—
  - (a) it is impracticable to construct a fence entirely on the common boundary of the adjoining lands because of natural physical features; or
  - (b) the adjoining land includes 1 or more parcels of pastoral land separated by a watercourse, lake, or other natural or artificial feature insufficient to stop the passage of stock at all times.

## 13 Meaning of *sufficient dividing fence*

- (1) A dividing fence is a *sufficient dividing fence* if—
  - (a) for adjoining land consisting of 2 parcels of residential land, the dividing fence—
    - (i) is between a minimum of 0.5m and a maximum of 1.8m in height; and
    - (ii) consists substantially of prescribed material; or
  - (b) for adjoining land consisting of 2 parcels of pastoral land, the dividing fence is sufficient to restrain livestock of the type grazing on each of the parcels of land; or
  - (c) in any case—
    - (i) the adjoining owners agree the dividing fence is a sufficient dividing fence; or

- (ii) QCAT decides the dividing fence is a sufficient dividing fence.
- (2) For this chapter, the existence of a fence, other than a dividing fence, on adjoining land must not be taken into account in deciding whether there is a sufficient dividing fence.
- (3) In this section—
- prescribed material***, for a dividing fence, means any of the following materials unless the material does not comply with a requirement under a relevant local law—
- (a) wood, including timber palings and lattice panels;
  - (b) chain wire;
  - (c) metal panels or rods;
  - (d) bricks;
  - (e) rendered cement;
  - (f) concrete blocks;
  - (g) hedge or other vegetative barrier;
  - (h) other material of which a dividing fence is ordinarily constructed.

## 14 Meaning of *owner* for land

- (1) An *owner*, for land, is—
- (a) if the land is a lot recorded in the freehold land register under the *Land Title Act 1994*—the registered owner of the lot under that Act; or
  - (b) if the land is subject to a lease or licence under the *Land Act 1994*—the lessee or licensee under that Act; or
  - (c) if the land is subject to an occupation permit or stock grazing permit under the *Forestry Act 1959*, section 35—the grantee for the permit; or
  - (d) if the land is subject to a stock grazing permit under the *Nature Conservation Act 1992*—the grantee for the permit; or

- (e) if the land is scheme land under the *Body Corporate and Community Management Act 1997*—the body corporate for the community titles scheme; or
  - (f) if the land is a parcel of land the subject of a plan under the *Building Units and Group Titles Act 1980*—the body corporate for the plan; or
  - (g) if the land is let or may be let—a person who is entitled to, or would be entitled to, the rents and profits of the land whether as a beneficial owner, trustee, mortgagee in possession or otherwise.
- (2) However, if the land is—
- (a) used as a public park and the registered owner of the land is a local government, the local government is not an owner for the land; or
  - (b) a State plantation forest and a plantation licensee holds an interest under the *Forestry Act 1959* over the land, the plantation licensee is not an owner for the land; or
  - (c) a State plantation forest and a plantation sublicensee holds an interest under the *Forestry Act 1959* over the land, the plantation sublicensee is not an owner for the land.

## 15 Meaning of *adjoining owners* and *adjoining land*

- (1) *Adjoining owners* are the owners of the land on either side of a common boundary.
- (2) Also, the owners of agricultural land or pastoral land on either side of a road are *adjoining owners* if—
  - (a) the owners agree to be adjoining owners under this chapter; or
  - (b) QCAT decides a fence has been used, or could reasonably be used, as a dividing fence for the 2 parcels of land.

*Note—*

This means that a responsibility to contribute to fencing work may apply to a fence on 1 side of a road.

- (3) ***Adjoining land*** is the land on either side of a common boundary.

## 16 Meaning of ***fencing work***

***Fencing work***, for a dividing fence, means—

- (a) the design, construction, modification, replacement, removal, repair or maintenance of the whole or part of the dividing fence; and
- (b) the surveying or preparation of land, including the trimming, lopping or removal of vegetation, along or on either side of the common boundary of adjoining lands for a purpose mentioned in paragraph (a);

and includes—

- (c) the planting, replanting and maintenance of a hedge or similar vegetative barrier as the dividing fence; and
- (d) the cleaning, deepening, enlargement or alteration of a ditch, embankment or watercourse that serves as the dividing fence; and
- (e) obtaining an approval required for fencing work.

## 17 Meaning of ***authorisation***

***Authorisation***, for a dividing fence, means—

- (a) the adjoining owners have agreed under this chapter about fencing work to be carried out for the dividing fence; or
- (b) QCAT has ordered that fencing work be carried out for the dividing fence.



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

- (1) *Agricultural land* is rural land of more than half a hectare used for cultivating crops on a commercial basis regardless of whether the land is also used for residential purposes.
- (2) *Pastoral land* is rural land of more than half a hectare used for grazing stock on a commercial basis regardless of whether the land is also used for residential purposes.
- (3) *Prescribed rural land* is agricultural land, pastoral land or other rural land of more than half a hectare primarily used for residential purposes.
- (4) *Residential land* is land, other than agricultural land and pastoral land, used primarily for residential purposes.

## **Part 3 Neighbours' responsibilities**

### **19 Ownership of dividing fence**

This Act does not affect the common law under which a dividing fence separating adjoining land is, to the extent the dividing fence is on the common boundary, owned equally by the adjoining owners.

### **20 Liability for fencing work**

- (1) If there is no sufficient dividing fence between 2 parcels of land consisting of adjoining land, an adjoining owner is liable to contribute to carrying out fencing work for a sufficient dividing fence.

*Note—*

An adjoining owner may contribute by a payment of an amount or provision of labour or materials.

- (2) If carrying out fencing work includes construction or replacement of a sufficient dividing fence, the fence must be constructed or replaced on the common boundary other than

[s 21]

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to the extent it is impracticable to do so because of natural physical features.

- (3) However, other than for urgent fencing work, subsection (1) is only enforceable if—
  - (a) the adjoining owners have agreed under this chapter about carrying out the fencing work; or
  - (b) QCAT has ordered that the fencing work be carried out.
- (4) To remove any doubt, it is declared that subsection (1) applies even if—
  - (a) there is already a dividing fence other than a sufficient dividing fence; or
  - (b) one or both parcels of land are vacant land.

## **21 Contribution between adjoining owners—generally**

- (1) Adjoining owners are each liable to contribute equally to carrying out fencing work for a sufficient dividing fence.
- (2) An adjoining owner who wants to carry out fencing work for a dividing fence to a standard greater than the standard for a sufficient dividing fence is liable for the fencing work to the extent that it is greater than the standard for a sufficient dividing fence.

## **22 Contribution—parcel of prescribed rural land adjoining residential development**

- (1) This section applies if—
  - (a) adjoining land previously consisted of 2 parcels of prescribed rural land; and
  - (b) there is a residential development of all or part of 1 parcel of the adjoining land.

*Example—*

The adjoining land consists of a sugar cane farm and a housing estate but previously consisted of 2 sugar cane farms.

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- (2) An owner of prescribed rural land is liable to contribute to carrying out fencing work for a dividing fence that would have been a sufficient dividing fence for the 2 parcels of prescribed rural land before the residential development.

## 23 Contribution—prescribed land adjoining residential development

- (1) This section applies if—
- (a) adjoining land previously consisted of 2 parcels of prescribed land; and
  - (b) there is a residential development of all or part of 1 parcel of the adjoining land.
- (2) An owner of prescribed land is liable to contribute to carrying out fencing work for a dividing fence that would have been a sufficient dividing fence for the 2 parcels of prescribed land before the residential development.
- (3) In this section—
- prescribed land* means land greater than a size prescribed by regulation.

## 24 Liability of lessee

- (1) This section applies if—
- (a) an owner of land is liable to contribute to carrying out fencing work for a sufficient dividing fence (the *owner's share*); and
  - (b) a lessee, other than a lessee under the *Retail Shop Leases Act 1994*, has a lease of the land from the owner.
- (2) If, at the time the fencing work is carried out, the unexpired term of the lease is the number of years mentioned in column 1 of the following table—
- (a) the owner is liable for the percentage of the owner's share mentioned in column 2 of the table; and

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- (b) the lessee is liable for the percentage of the owner's share mentioned in column 3 of the table.

<b>Column 1</b> <b>Length of unexpired term of lease</b>	<b>Column 2</b> <b>Liability of owner</b>	<b>Column 3</b> <b>Liability of lessee</b>
less than 5 years	100%	0%
5 or more but less than 7 years	75%	25%
7 or more but less than 12 years	50%	50%
12 or more years	0%	100%

- (3) However, the lessee is liable to contribute only if the owner gives the lessee, as soon as practicable, a copy of a notice the owner gives or is given under this chapter for the land.
- (4) If the owner gives the lessee a notice under subsection (3), for this chapter—
- (a) there is no agreement between the owner and the adjoining owner without the lessee's agreement; and
  - (b) the lessee has the same rights as the owner for a proceeding before QCAT.
- (5) If the lessee pays an amount more than the lessee is required to pay under this section, the lessee may—
- (a) recover the excess paid from the owner; or
  - (b) set off the excess against any rent payable to the owner.
- (6) In this section—
- owner** does not include the following—
- (a) the State;
  - (b) a local government;
  - (c) an owner under section 14(1)(b).

## **25 Contribution—particular State land**

- (1) If—

- 
- (a) an owner constructs a dividing fence, whether before or after the commencement of this section, for adjoining land consisting of the owner's land and a parcel of land mentioned in section 8(2) to (4); and
  - (b) a person acquires an interest or title for part or all of the adjoining land from the State;

the person is liable for half of the relevant fencing cost.

- (2) At the time the person acquires the interest for part or all of the adjoining land, the State must give the person notice of the person's liability under this section.

- (3) In this section—

*relevant fencing cost* means the lesser of—

- (a) the cost, at the date the fence was constructed, of fencing work required to have a sufficient dividing fence; and
- (b) the cost, at the date the person becomes liable, of fencing work required to have a sufficient dividing fence.

## **26 Contribution—negligent or deliberate act or omission**

- (1) This section applies if, whether before or after the commencement of this section, a dividing fence is damaged or destroyed by a negligent or deliberate act or omission of—

- (a) an owner of land; or
- (b) a person who has entered the owner's land with the express consent of the owner.

- (2) The owner must restore the dividing fence to a reasonable standard, having regard to its state before the damage or destruction.

*Note—*

If the owner does not comply with subsection (2), the adjoining owner may give the owner a notice under section 31 or carry out urgent fencing work.

## **27 Attaching things to a dividing fence**

- (1) An owner, or a person who has entered the owner's land with the owner's express consent, must not, without the consent of the adjoining owner, attach a thing to a dividing fence that unreasonably and materially alters or damages the dividing fence.

*Examples of an attachment—*

carport, shade sails, lattice work, canvas, signs

- (2) If an owner does not comply with subsection (1), the adjoining owner may apply to QCAT for an order requiring the owner to remove the thing attached and restore the dividing fence to a reasonable standard, having regard to its state before the thing was attached.

## **28 Urgent fencing work**

- (1) This section applies if all or part of a dividing fence is damaged or destroyed and, in the circumstances, urgent fencing work is required.
- (2) If it is impracticable to give a notice under section 31, an owner may, without giving the notice, carry out the fencing work required to restore the dividing fence to a reasonable standard, having regard to its state before the damage or destruction.

*Note—*

Contribution from an adjoining owner to the cost of the urgent fencing work may be obtained after giving a notice to the adjoining owner under section 32.

- (3) The cause of the damage or destruction does not affect the operation of this section.

## **29 Agreement does not affect title or possession**

The occupation of land on either side of a dividing fence, as a result of an agreement under this chapter that fencing work is to be carried out on a line other than on the common boundary

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of the adjoining lands, does not affect the title to, or possession of, the land.

## **Part 4**                      **Process for obtaining contribution and resolving disputes**

### **Division 1**                **Introduction**

#### **30**      **Overview**

- (1) Adjoining owners are encouraged to attempt to resolve issues about fencing work to avoid a dispute arising.
- (2) If an owner wants an adjoining owner to contribute to fencing work, the owner must give the adjoining owner a notice to contribute under division 2.

*Notes—*

- 1 Other than for urgent work or with leave from QCAT, the notice must be given and adjoining owners must agree before the fencing work is done.
  - 2 See part 5 for the process for dealing with unauthorised fencing work.
- (3) An owner may apply to QCAT for resolution of a dispute if the dispute arises about—
    - (a) carrying out fencing work for which a notice to contribute has been given; or
    - (b) carrying out fencing work for a dividing fence without authorisation.

## **Division 2                      Notice to contribute**

### **31            Notice to contribute for fencing work**

- (1) An owner may require the adjoining owner to contribute, under this chapter, to the carrying out of fencing work for a dividing fence by giving a notice to the adjoining owner.
- (2) The notice must be in the approved form and state the following—
  - (a) a description of the land on which the fencing work is proposed to be carried out and, if the fencing work is to construct or replace a dividing fence, the line on which it is proposed to construct or replace the fence;
- (3) The notice must be accompanied by a copy of at least 1 written quotation stating the estimated cost of the fencing work to be carried out.
- (4) The owner giving the notice may propose that any cost of the fencing work to be carried out is to be borne other than in equal proportions.
- (5) For subsection (4), the notice must state the proposed proportions.
- (6) If, within 1 month after the notice is given, the adjoining owners have not agreed about the proposed fencing work to be carried out and their contributions to the proposed fencing work, either adjoining owner may, within 2 months after the notice is given, apply to QCAT for an order under section 35.

*Note—*

An adjoining owner may contribute by a payment of an amount or provision of labour or materials.



- (7) Until the adjoining owners have agreed about the proposed fencing work to be carried out and their contributions to the proposed fencing work, neither owner may carry out fencing work, or arrange to have fencing work carried out, for the dividing fence other than for urgent fencing work.

### **32 Notice to contribute for urgent fencing work**

- (1) This section applies if an owner carried out fencing work under section 28.
- (2) The owner may require the adjoining owner to contribute, under this chapter, to any reasonable cost incurred for the fencing work by giving a notice to the adjoining owner.
- (3) The notice must be in the approved form and state the following—
- (a) a description of the land on which the fencing work was carried out;
  - (b) the reason urgent fencing work was required;
  - (c) the type of fencing work carried out;
  - (d) any cost incurred for the fencing work and a receipt for the cost.
- (4) The owner giving the notice may propose that the contribution to carrying out the fencing work is to be borne other than in equal proportions.
- (5) For subsection (4), the notice must state the proposed proportions.
- (6) If, within 1 month after the notice is given, the adjoining owners have not agreed about their contributions to carrying out the fencing work, either adjoining owner may, within 2 months after the notice is given, apply to QCAT for an order under section 35.

## **Division 3                      Resolving disputes**

### **33            Jurisdiction**

- (1) QCAT has jurisdiction to hear and decide any matter arising under this chapter.
- (2) If there is more than 1 fence on the boundary of adjoining land, QCAT may decide which of the fences is the dividing fence for the purpose of this chapter and order the removal of the other fence or fences.
- (3) If there is a fence other than a dividing fence on adjoining land, QCAT may order that it be removed if QCAT considers its removal is necessary to allow fencing work for a dividing fence.

### **34            Representation**

Without limiting the QCAT Act, section 43, in a proceeding under this chapter an adjoining owner may be represented by a real estate agent.

*Note—*

The QCAT Act, section 43 allows a person to be represented by someone else if the person has impaired capacity or the person has been given leave by QCAT.

### **35            Orders about carrying out fencing work**

- (1) QCAT may, for an application in relation to fencing work for a dividing fence, decide and order any 1 or more of the following—
  - (a) the line on which the fencing work is to be carried out, whether or not that line is on the common boundary of the adjoining land;
  - (b) the fencing work to be carried out, including the kind of dividing fence involved;

- (c) the way in which contributions for the fencing work are to be apportioned or reapportioned or the amount that each adjoining owner is liable to pay for the fencing work;
  - (d) the part of the dividing fence to be constructed or repaired by either adjoining owner;
  - (e) the time by which the fencing work is to be carried out;
  - (f) any other work to be carried out that is necessary to carry out the fencing work ordered under this section including work for a retaining wall;
  - (g) that, in the circumstances, no dividing fence is required for all or part of the boundary of the adjoining lands;
  - (h) that a fence has been used, or could reasonably be used, as a dividing fence under section 15;
  - (i) the amount of compensation payable to an adjoining owner for damage or destruction to a dividing fence caused by another adjoining owner or a person mentioned in section 26(1)(b);
  - (j) that an adjoining owner remove a thing attached to a dividing fence and restore the dividing fence;
  - (k) the amount of compensation payable to an adjoining owner for the removal of a fence under section 33(3).
- (2) The occupation of land on either side of a dividing fence, as a result of an order that fencing work is to be carried out on a line other than on the common boundary of the adjoining lands, does not affect the title to, or possession of, the land.

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

In deciding an application about whether a dividing fence is a sufficient dividing fence, QCAT may consider all the circumstances of the application, including the following—

- (a) any existing or previously existing dividing fence;

[s 37]

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- (b) the purposes for which the 2 parcels of land consisting of the adjoining land are used, or intended to be used;
- (c) the kind of dividing fence normally used in the area;
- (d) whether the dividing fence is capable of being maintained by the adjoining owners;
- (e) any policy adopted, or local law made, in relation to dividing fences by a local government for the area where either parcel of land is situated;
- (f) any requirement for fencing work in a development approval for the land of either adjoining owner;
- (g) any written agreement made between the adjoining owners for the purposes of this chapter.

### **37 Application for order in absence of adjoining owner**

- (1) An owner may apply to QCAT for an order, in the absence of the adjoining owner, authorising the carrying out of fencing work, including the way in which contributions for the work are to be apportioned.
- (2) An order may be made under subsection (1) if QCAT is satisfied that the owner could not locate the adjoining owner after making all reasonable inquiries.

*Examples of reasonable inquiries—*

- searching the electoral roll or telephone directory
  - making inquiries with immediate neighbours, tenants, real estate agents and the local government about where the adjoining owner is
- (3) An owner who carries out fencing work authorised by an order under this section and who later locates the adjoining owner may—
    - (a) give a copy of the order to the adjoining owner; and
    - (b) after 1 month from the day of giving a copy of the order, recover from the adjoining owner the adjoining owner's contribution as stated in the order.

- (4) The adjoining owner given a copy of an order under subsection (3) may, within 1 month after being given the copy, apply to QCAT for a variation of the order and QCAT may vary the order in any way it considers appropriate.
- (5) This section continues to apply to the owner or adjoining owner even if, after the order was made, the owner or the adjoining owner stopped owning the relevant parcel of land consisting of the adjoining land.

## **Part 5**

### **Process for dealing with unauthorised construction or demolition**

#### **38 Application before unauthorised construction or demolition**

- (1) If an owner believes on reasonable grounds 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 adjoining owner from constructing or demolishing the dividing fence.
- (2) The owner must give the adjoining owner a copy of the application at least 1 day before the application is heard.

*Note—*

Under the *Acts Interpretation Act 1954*, section 38(3), if the day before the application is heard falls on a day that is not a business day, the last day for giving a copy of the application is taken to be the next earlier business day.

- (3) On application under this section, QCAT may make an order preventing the adjoining owner from constructing or demolishing a dividing fence.

**39 Application after unauthorised construction or demolition**

- (1) If an owner constructs or demolishes a dividing fence without authorisation, the adjoining owner may apply to QCAT for an order requiring the owner to remove, modify or rectify the fence.
- (2) The adjoining owner must give the owner a copy of the application at least 3 days before the application is heard.
- (3) On application under this section, QCAT may make an order requiring the owner to—
  - (a) remove, modify or rectify the fence; and
  - (b) bear the costs of the removal, modification or rectification.

**Part 6 Process if common boundary not agreed**

**40 Process if common boundary not agreed**

- (1) This section applies if adjoining owners do not agree on the position of the common boundary for the purposes of carrying out fencing work for a dividing fence.
- (2) An owner may give a written notice to the adjoining owner, or the adjoining owner's agent, of the owner's intention to have the common boundary defined by a cadastral surveyor engaged by the owner.
- (3) If an adjoining owner is given a notice under subsection (2), the adjoining owner may, within 1 month after the notice is given—
  - (a) have the common boundary defined by a cadastral surveyor engaged by the adjoining owner and give the owner written advice of the common boundary as defined by the cadastral surveyor; or

- (b) give the owner written advice of the common boundary as defined by the adjoining owner if the adjoining owner is satisfied of the accurate position of the common boundary.
- (4) Unless an owner who has given notice under subsection (2) receives advice under subsection (3)(a), the owner may have the common boundary defined by a cadastral surveyor engaged by the owner.
- (5) If the common boundary defined by a cadastral surveyor engaged by the owner under subsection (4) is in about the same position as the position defined by the adjoining owner in an advice under subsection (3)(b), the adjoining owner is not liable for any of the reasonable cost of engaging the cadastral surveyor.
- (6) If subsection (5) does not apply—
  - (a) adjoining owners are each liable for half the reasonable cost of engaging a cadastral surveyor under this section to define the position of the common boundary; and
  - (b) if 1 adjoining owner pays the entire cost, the half payable by the other adjoining owner is recoverable as a debt by the first adjoining owner.
- (7) In this section—

*cadastral surveyor* means a person registered as a cadastral surveyor under the *Surveyors Act 2003*.

## Chapter 3      Trees

### Part 1                      Introduction

#### 41      Overview

- (1) A tree-keeper is responsible for the proper care and maintenance of the tree-keeper's tree.

*Note—*

The tree-keeper's specific responsibilities are set out in section 52.

- (2) Generally, this chapter provides for the following ways in which a person may deal with an issue about a tree affecting the person's land—
- (a) part 3 deals with the person's right under the common law to take action to abate a nuisance;
  - (b) part 4 provides for a remedy under which the person may—
    - (i) give a notice to the tree-keeper asking them to remove overhanging branches; and
    - (ii) if the work is not done, remove the branches and recover the cost from the tree-keeper;
  - (c) part 5 provides for the person to apply to QCAT for an order.

#### 42      Trees to which this chapter applies

- (1) Subject to subsections (2) to (5), this chapter applies to trees on the following land—
- (a) land recorded in the freehold land register;
  - (b) land the subject of a lease or licence under the *Land Act 1994*;
  - (c) land subject to an occupation permit or stock grazing permit under the *Forestry Act 1959*, section 35;



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- (d) land subject to a stock grazing permit under the *Nature Conservation Act 1992*;
  - (e) land contained in a reserve under the *Land Act 1994* other than a reserve—
    - (i) for a purpose mentioned in section 31(1)(a) to (c) of that Act; or
    - (ii) dedicated under section 31(1)(d) of that Act.
  - (2) A regulation may provide that this chapter, or a stated provision of this chapter, does not apply to trees situated on land within a stated local government area.
  - (3) This chapter does not apply to trees situated on—
    - (a) rural land; or
    - (b) a parcel of land that is more than 4 hectares; or
    - (c) land owned by a local government that is used as a public park; or
    - (d) land prescribed by regulation.
  - (4) This chapter does not apply to trees planted or maintained—
    - (a) for commercial purposes; or
    - (b) under an order of a court or tribunal; or
    - (c) as a condition of a development approval.
  - (5) To remove any doubt, it is declared that this chapter does not apply to trees situated on unallocated State land.

#### **43 Requirements under other laws**

Except to the extent provided under section 67, this chapter does not—

- (a) authorise work to be carried out that would otherwise be unlawful under another Act; or
- (b) otherwise limit the operation of another law requiring a consent or authorisation to be obtained before work may be carried out.

#### **44 Action may be taken in relation to more than 1 tree**

- (1) To remove any doubt, it is declared that, if this chapter provides for doing a thing in relation to a tree, the thing may be done in relation to 2 or more trees.

*Examples—*

- 1 A person may give a notice under section 57 asking a tree-keeper to cut and remove branches from 2 trees.
  - 2 A person may apply to QCAT for an order under section 66 in relation to a hedge comprising a number of trees.
- (2) Subsection (1) does not limit the *Acts Interpretation Act 1954*, section 32C.

## **Part 2 Interpretation**

#### **45 Meaning of *tree***

- (1) ***Tree*** means—

- (a) any woody perennial plant; or
- (b) any plant resembling a tree in form and size; or

*Examples—*

bamboo, banana plant, palm, cactus

- (c) a vine; or
  - (d) a plant prescribed under a regulation to be a tree for this chapter.
- (2) ***Tree*** includes—
- (a) a bare trunk; and
  - (b) a stump rooted in the land; and
  - (c) a dead tree.
- (3) However, ***tree*** does not include a plant prescribed under a regulation not to be a tree for this chapter.

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#### 46 When is land *affected by a tree*

Land is *affected by a tree* at a particular time if—

- (a) any of the following applies—
  - (i) branches from the tree overhang the land;
  - (ii) the tree has caused, is causing, or is likely within the next 12 months to cause—
    - (A) serious injury to a person on the land; or
    - (B) serious damage to the land or any property on the land; or
    - (C) substantial, ongoing and unreasonable interference with the neighbour's use and enjoyment of the land; and
- (b) the land—
  - (i) adjoins the land on which the tree is situated; or
  - (ii) would adjoin the land on which the tree is situated if it were not separated by a road.

#### 47 When is a tree *situated* on land

- (1) A tree is *situated* on land if the base of the tree trunk is, or was previously, situated wholly or mainly on the land.
- (2) Without limiting subsection (1), if a neighbour applies to QCAT for an order under section 66 in relation to a tree and the tree is completely removed from the land, the tree is taken to be situated on the land for the purpose of the application.

*Note—*

See section 68 for an order QCAT may make in relation to a tree that has been removed.

#### 48 Who is a *tree-keeper*

- (1) The following person is the *tree-keeper* for a tree—

[s 49]

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- (a) if the land on which the tree is situated is a lot recorded in the freehold land register under the *Land Title Act 1994*—the registered owner of the lot under that Act;
  - (b) if the land on which the tree is situated is subject to a lease or licence under the *Land Act 1994*—the lessee or licensee under that Act;
  - (c) if the land on which the tree is situated is subject to an occupation permit or stock grazing permit under the *Forestry Act 1959*, section 35—the grantee for the permit;
  - (d) if the land on which the tree is situated is subject to a stock grazing permit under the *Nature Conservation Act 1992*—the grantee for the permit;
  - (e) if the land on which the tree is situated is common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*—the body corporate for the community titles scheme;
  - (f) if the land on which the tree is situated is common property comprised in a plan under the *Building Units and Group Titles Act 1980*—the body corporate for the plan;
  - (g) if the land on which the tree is situated consists of all or part of a reserve under the *Land Act 1994* other than a reserve mentioned in section 42(1)(e)(i) or (ii)—the trustee of the reserve.
- (2) Nothing in this chapter confers ownership of a tree.

## 49 Who is a *neighbour*

- (1) Each of the following entities is a *neighbour* in relation to a particular tree or the tree-keeper for a particular tree—
- (a) if land affected by the tree is a lot recorded in the freehold land register under the *Land Title Act 1994*—
    - (i) a registered owner of the lot under that Act; and
    - (ii) an occupier of the land;

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- (b) if land affected by the tree is scheme land under the *Body Corporate and Community Management Act 1997*—the body corporate for the community titles scheme;
  - (c) if land affected by the tree is a parcel of land the subject of a plan under the *Building Units and Group Titles Act 1980*—the body corporate for the plan.
- (2) However, subsection (1)(a)(ii) does not apply for part 4.

## 50 Meaning of *work*

*Work*, on a tree, includes—

- (a) cutting and removing any part of the tree (including its branches or roots); and
- (b) netting the tree; and
- (c) destroying the tree.

## 51 Meaning of *destroy*

*Destroy*, for a tree, means destroy in any way, including uproot, ringbark or cut down the tree, and includes remove the tree and its stump.

# Part 3 Responsibilities, liabilities and rights

## 52 Responsibilities of a tree-keeper

- (1) A tree-keeper is responsible for cutting and removing any branches of the tree that overhang a neighbour's land.
- (2) A tree-keeper is responsible for ensuring that the tree does not cause—
  - (a) serious injury to a person; or

[s 53]

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- (b) serious damage to a person's land or any property on a person's land; or
  - (c) substantial, ongoing and unreasonable interference with a person's use and enjoyment of the person's land.
- (3) This section does not create a civil cause of action based on a breach of a tree-keeper's responsibilities.

*Note—*

This section is intended to help a tree-keeper and neighbours resolve any issues about a tree without a dispute arising. However, this section does not create a separate cause of action. This chapter provides ways of dealing with some issues that fall within a tree-keeper's responsibilities under this section.

### **53 More than 1 tree-keeper**

If there is more than 1 tree-keeper for a tree—

- (a) the responsibilities and liabilities of the tree-keeper for the tree under this chapter are shared equally; and
- (b) a notice that may or must be given to the tree-keeper for a tree under this chapter may be given to any of the tree-keepers.

### **54 Common law right of abatement**

- (1) This Act does not affect the common law right of abatement in relation to a tree other than as provided under subsection (2).
- (2) A neighbour who exercises the common law right of abatement by removing a part of a tree (for example, an overhanging branch containing fruit) may, but is not required to, return the removed part to the tree-keeper.

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## **Part 4**                      **Removal of overhanging branches**

### **55**      **Application of this part**

This part applies if—

- (a) a neighbour's land is affected by a tree because branches from the tree overhang the land; and
- (b) the neighbour wants the overhanging branches removed.

*Notes—*

- 1 A reference in this part to a neighbour does not include an occupier of a freehold lot who is not the registered owner—see section 49(1)(a)(ii) and (2).
- 2 A person must not cut branches under this part without obtaining any consent or authorisation required by another law, including a vegetation protection order—see section 43.

### **56**      **Overview**

- (1) The tree-keeper and neighbour are encouraged to resolve the issue informally.
- (2) However, the neighbour may—
  - (a) exercise the common law right of abatement; or
  - (b) use the formal resolution process set out in this part.

### **57**      **Notice for particular overhanging branches**

- (1) This section applies in relation to each of the overhanging branches—
  - (a) only if the branch extends to a point over the neighbour's land that is at least 50cm from the common boundary; and
  - (b) only to the extent the branch is 2.5m or less above the ground.

[s 57]

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- (2) The neighbour may give a written notice to the tree-keeper asking the tree-keeper to cut and remove the overhanging branches.
  - (3) The notice must—
    - (a) state a time of at least 30 days after the day the notice is given by which the branches are to be cut and removed; and
    - (b) ask the tree-keeper to give the neighbour a written notice, no later than the day before anyone enters the neighbour's land to cut and remove the branches, that states—
      - (i) the person who will cut and remove the overhanging branches; and
      - (ii) the day on which the work will be carried out; and
    - (c) give permission to the tree-keeper or the tree-keeper's contractor to enter the neighbour's land on the day advised under paragraph (b), between 8.00a.m. and 5.00p.m., to cut and remove the branches; and
- Notes—*
- 1 It is the neighbour's responsibility to consider public liability insurance before giving a person permission to enter the neighbour's land.
  - 2 It is the tree-keeper's responsibility to consider a contractor's insurance before engaging a contractor to carry out work on a tree.
- (d) be accompanied by—
    - (i) at least 1 written quotation stating the estimated cost of the work; and
    - (ii) a copy of this part.
- (4) Permission under subsection (3)(c) does not authorise entry to a dwelling on the neighbour's land.
- (5) The neighbour may not give the notice if the neighbour has given another notice under subsection (2) within the previous 12 months (for any tree) to—



- (a) the tree-keeper; or
- (b) anyone else who is also a tree-keeper for the tree with the overhanging branches mentioned in subsection (1).

## **58 Resolution by neighbour**

- (1) This section applies if the overhanging branches are not cut and removed within the time notified to the tree-keeper under section 57(3)(a).
- (2) The neighbour—
  - (a) may cut and remove the overhanging branches or arrange for someone else to cut and remove the overhanging branches; and
  - (b) may, but is not required to, return the branches to the tree-keeper.
- (3) Subsection (2) does not authorise entry to the tree-keeper's land.
- (4) The tree-keeper is liable for the reasonable expenses incurred by the neighbour involved in cutting and removing the overhanging branches, but only to a maximum of \$300.
- (5) The neighbour may recover as a debt the amount for which the tree-keeper is liable under subsection (4).

*Note—*

A debt, with or without interest, of up to the prescribed amount may be recovered in minor civil dispute proceedings under the QCAT Act.

## **Part 5**                              **QCAT orders to resolve other issues about trees**

### **Division 1**                      **Preliminary**

#### **59**      **Application of this part**

This part applies if—

- (a) a neighbour’s land is affected by a tree; and
- (b) the neighbour can not resolve the issue using the process under part 4.

*Examples—*

- 1 The neighbour’s land is affected by a tree other than because branches from the tree overhang the land.
- 2 Branches from a tree overhang the neighbour’s land and the neighbour is seeking a remedy that is more than the cutting and removal of the branches.
- 3 The neighbour is seeking the cutting and removal of branches overhanging the neighbour’s land that are more than 2.5m above the ground.

#### **60**      **Overview**

- (1) The tree-keeper and neighbour are encouraged to resolve the issue informally.
- (2) However, the neighbour may—
  - (a) exercise the common law right of abatement; or
  - (b) apply to QCAT for resolution of the issue.

#### **61**      **Jurisdiction**

QCAT has jurisdiction to hear and decide any matter in relation to a tree in which it is alleged that, as at the date of the application to QCAT, land is affected by the tree.

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## **Division 2                      Applying to QCAT**

### **62            Neighbour may apply to QCAT**

- (1) The neighbour may apply, as provided under the QCAT Act, to QCAT for an order under section 66.
- (2) However, if the land affected by the tree is a lot recorded in the freehold land register and the neighbour is an occupier but not a registered owner of the land, the neighbour may apply only if a registered owner of the land has refused to make the application.

### **63            Giving a copy of an application**

- (1) At least 21 days before the day that the application is to be heard, the neighbour must give each of the following entities a copy of the application—
  - (a) the tree-keeper;
  - (b) any government authority that would be entitled to appear in proceedings in relation to the tree under section 64;
  - (c) 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;
  - (d) if the land affected by the tree is a lot recorded in the freehold land register and the neighbour is an occupier but not a registered owner of the land—each registered owner of the land.
- (2) QCAT may—
  - (a) waive the requirement to give a copy of the application; or
  - (b) vary the minimum period before the hearing of the application by which the application must be given;if it considers it appropriate in the circumstances.

*Example—*

QCAT considers that a tree poses an imminent threat of serious injury to a person or damage to the neighbour's land or property on the neighbour's land.

## **Division 3                      Making an order**

### **64            Government authority may appear**

A government authority may appear in a proceeding under this part if carrying out work on the tree may require the consent or authorisation of the government authority.

### **65            Requirements before order may be made**

QCAT may make an order under section 66 if it is satisfied of the following matters—

- (a) the neighbour has made a reasonable effort to reach agreement with the tree-keeper;
- (b) the neighbour has taken all reasonable steps to resolve the issue under any relevant local law, local government scheme or local government administrative process;

*Note—*

The relevant local government may have a scheme for dealing with 'nuisance' trees.

- (c) to the extent the issue relates to the land being affected because branches from the tree overhang the land—
  - (i) the branches extend to a point over the neighbour's land that is at least 50cm from the common boundary; and
  - (ii) the neighbour can not properly resolve the issue using the process under part 4;
- (d) the neighbour has given the copies of the application under section 63, other than to the extent the requirement to do so has been waived.

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## 66 Orders QCAT may make

- (1) Division 4 states the matters for QCAT's consideration in deciding an application for an order under this section.
- (2) QCAT may make the orders it considers appropriate in relation to a tree affecting the neighbour's land—
  - (a) to prevent serious injury to any person; or
  - (b) to remedy, restrain or prevent—
    - (i) serious damage to the neighbour's land or any property on the neighbour's land; or
    - (ii) substantial, ongoing and unreasonable interference with the use and enjoyment of the neighbour's land.
- (3) However, subsection (2)(b)(ii) applies to interference that is an obstruction of sunlight or a view only if—
  - (a) the tree rises at least 2.5m above the ground; and
  - (b) the obstruction is—
    - (i) severe obstruction of sunlight to a window or roof of a dwelling on the neighbour's land; or
    - (ii) severe obstruction of a view, from a dwelling on the neighbour's land, that existed when the neighbour took possession of the land.
- (5) Without limiting the powers of QCAT to make orders under subsection (2), an order may do any of the following—
  - (a) require or allow the tree-keeper or neighbour to carry out work on the tree on a particular occasion or on an ongoing basis;

*Examples—*

- an order that requires the removal of the tree within 28 days
- an order that requires particular maintenance work on the tree during a particular season every year
- an order that requires particular work to maintain the tree at a particular height, width or shape

- (b) require that a survey be undertaken to clarify the tree's location in relation to the common boundary;
  - (c) require a person to apply for a consent or other authorisation from a government authority in relation to the tree;
  - (d) authorise a person to enter the tree-keeper's land to carry out an order under this section, including entering land to obtain a quotation for carrying out an order;
  - (e) require the tree-keeper or neighbour to pay the costs associated with carrying out an order under this section;
  - (f) require the tree-keeper to pay compensation to a neighbour for damage to the neighbour's land or property on the neighbour's land;
  - (g) require a report by an appropriately qualified arborist.
- (6) In this section—
- window* includes a glass door, window forming part of a door, skylight or other similar thing.

## **67 Scope of order to override other laws**

- (1) If QCAT is satisfied the application before it was made because of a genuine dispute, it may make an order for a person to carry out work on a tree even though—
  - (a) consent is withheld by a local government or a tree-keeper under a vegetation protection order; or
  - (b) a local law requires a consent or authorisation to be given before the work may be carried out; or
  - (c) the work is otherwise restricted or prohibited under a local law.
- (2) Work carried out under an order made under subsection (1) is lawful despite a local law.
- (3) Except as provided under subsection (1), QCAT may not make an order for a person to carry out work on a tree that is prohibited under another Act.

(4) In this section—

*local law* includes a by-law under the *Economic Development Act 2012*.

## **68 Order in relation to a removed tree**

(1) QCAT may make an order under section 66 even if the tree has been completely removed.

*Example—*

A neighbour may 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 since completely removed the tree.

(2) However, QCAT may not 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.

(3) For subsection (2), land is taken to be sold on the transfer day for the sale.

## **69 Additional order if destruction or removal of tree ordered**

If QCAT makes an order under section 66 for the destruction or removal of a tree, QCAT may also order that—

(a) the tree be replaced with—

(i) a tree appropriate to the environment and surroundings; or

(ii) a tree of a different level of maturity; and

(b) the replacement tree be situated in a place other than the place where the destroyed or removed tree was situated.

## **Division 4                      Matters for QCAT consideration**

### **70            Application of div 4**

- (1) This division states matters for QCAT to consider in deciding an application for an order under section 66.
- (2) This division does not limit the matters QCAT may consider.

### **71            Safety**

The primary consideration is the safety of any person.

### **72            Removal or destruction of living tree to be avoided**

A living tree should not be removed or destroyed unless the issue relating to the tree can not otherwise be satisfactorily resolved.

### **73            General matters to consider**

- (1) QCAT must consider the following matters—
  - (a) 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;
  - (b) 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;
  - (c) whether the tree has any historical, cultural, social or scientific value;
  - (d) any contribution the tree makes to the local ecosystem and to biodiversity;
  - (e) any contribution the tree makes to the natural landscape and the scenic value of the land or locality;



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- (f) any contribution the tree makes to public amenity;
  - (g) any contribution the tree makes to the amenity of the land on which it is situated, including its contribution relating to privacy, landscaping, garden design or protection from sun, wind, noise, odour or smoke;
  - (h) any impact the tree has on soil stability, the water table or other natural features of the land or locality;
  - (i) any risks associated with the tree in the event of a cyclone or other extreme weather event;
  - (j) the likely impact on the tree of pruning it, including the impact on the tree of maintaining it at a particular height, width or shape;
  - (k) 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 a local law.
- (2) For subsection (1)(c), the circumstances where a tree has historical, cultural, social or scientific value include where the tree—
- (a) is, or is part of, Aboriginal cultural heritage under the *Aboriginal Cultural Heritage Act 2003*; or
  - (b) is, or is part of, Torres Strait Islander cultural heritage under the *Torres Strait Islander Cultural Heritage Act 2003*; or
  - (c) is, or is situated in, a Queensland heritage place under the *Queensland Heritage Act 1992*.
- (3) For this Act, no financial value or carbon trading value may be placed on a tree.

## **74 Other matters to consider if serious injury or damage alleged**

- (1) If the neighbour alleges the tree has caused, is causing, or is likely to cause serious injury to any person, or serious damage to the neighbour's land or property on the neighbour's land, QCAT may consider—

[s 75]

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- (a) anything other than the tree that has contributed, or is contributing, to the injury or damage or likelihood of injury or damage, including any act or omission by the neighbour and the impact of any tree situated on the neighbour's land; and
  - (b) 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.
- (2) In making an order under section 66 to carry out work that involves destroying a tree, QCAT may consider—
- (a) how long the neighbour has known of the injury or damage; and
  - (b) any steps that have been taken by the tree-keeper or the neighbour to prevent further injury or damage; and
  - (c) anything other than the tree that may have caused, or contributed to, some or all of the injury or damage; and
  - (d) any other matter QCAT considers relevant.

## **75 Other matters to consider if unreasonable interference alleged**

If the neighbour alleges the tree has caused, or is causing, substantial, ongoing and unreasonable interference with the use and enjoyment of the neighbour's land, QCAT may consider—

- (a) anything other than the tree that has contributed, or is contributing, to the interference; and
- (b) any steps taken by the tree-keeper or the neighbour to prevent or minimise the interference; and
- (c) the size of the neighbour's land; and
- (d) whether the tree existed before the neighbour acquired the land; and
- (e) for interference that is an obstruction of sunlight or a view—any contribution the tree makes to the protection or revegetation of a waterway or foreshore.

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## **Division 5                    Matters following the making of an order**

### **76            Copy of order to be given to government authority**

QCAT must give a copy of any order it makes in relation to a tree, other than an order dismissing an application, to—

- (a) the local government for the local government area in which the tree is situated; and
- (b) any government authority that appeared in the proceeding.

### **77            Failure to comply with order**

A person must not fail to comply with a requirement imposed on the person by an order under this chapter unless the person has a reasonable excuse.

Maximum penalty—1,000 penalty units.

### **78            When order lapses or may be revoked**

- (1) An order made under this chapter lapses 10 years after the day on which the order was made unless the order expressly provides otherwise.
- (2) Without limiting the circumstances in which QCAT may make an order revoking an order made under this chapter, QCAT may, on application or on its own initiative, by order revoke an order it considers has been satisfied.

## **Part 6                            Register of QCAT orders**

### **79            Register**

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

- (2) QCAT must keep the register in electronic form and in such a way that a search of the register for particular land will show—
  - (a) the existence of an order affecting the land; and
  - (b) the time for carrying out the order; and
  - (c) the person responsible for carrying out the order.
- (3) For this section, land is affected by an order about a tree if, at the time the order was made, an owner or occupier of the land was a tree-keeper or neighbour for the tree.

## **80 Records to be kept by registrar**

- (1) QCAT must, within 14 days after making an order under this chapter (other than an order revoking another order), enter information about the order into the register.
- (2) A regulation may prescribe information that must be entered in the register under subsection (1).
- (3) QCAT must, within 14 days after making an order that revokes another order, remove from the register the information for the other order.

## **81 Entitlement to search register**

- (1) A person may search the register and obtain a certified copy of the information about an order that is included in the register.
- (2) No fee is payable for—
  - (a) searching the register; or
  - (b) obtaining a certified copy of information under subsection (1).
- (3) In a proceeding, a document purporting to be a certified copy of information under subsection (1) is evidence of the information.
- (4) In this section—

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*certified* means certified by the principal registrar under the QCAT Act.

## **Part 7**                      **Sale or proposed sale of affected land**

### **82**            **Definitions for pt 7**

In this part—

*application* means an application under this chapter that has not been decided, dismissed, struck out or withdrawn.

*land affected by an application or order* means land on which a tree the subject of an application or order is situated.

*order* means an order under this chapter, other than an obsolete order, requiring a person to carry out work on a tree the subject of the order.

### **83**            **Person to give buyer copy of application or order**

If a person is selling 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—500 penalty units.

### **84**            **Consequences if copy of application given**

If, under section 83, a person gives a copy of an application to a buyer, the buyer is joined as a party to the QCAT proceeding when the buyer enters into the contract of sale.

### **85**            **Consequences if copy of order given**

If, under section 83, a person gives a copy of an order to a buyer, 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—

- (a) the buyer were the person; and
- (b) any period mentioned in the order for carrying out the order commenced on the transfer day.

## **86 Consequences before transfer if copy of application or order not given**

- (1) This section applies if—
  - (a) a person is selling land affected by an application or order; and
  - (b) the person is given a copy of the application, or the order is made, before the person enters into a contract of sale for the land; and
  - (c) the person does not give a copy of the application or order to the buyer before the buyer enters into the contract of sale.
- (2) 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.
- (3) The notice of termination must state that the contract is terminated under this section.
- (4) If the contract is terminated, the seller must, within 14 days after the termination, refund any deposit paid under the contract to the buyer.  
Maximum penalty—200 penalty units.
- (5) If the seller, acting under subsection (4), instructs a person who holds the deposit paid under the contract to refund the deposit to the buyer, the person must immediately refund the deposit to the buyer.  
Maximum penalty—200 penalty units.
- (6) If the contract is terminated, the seller and the person who is acting for the seller and prepared the contract are liable to the

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buyer for the reasonable legal and other expenses incurred by the buyer in relation to the contract after the buyer signed the contract.

- (7) If more than 1 person is liable under subsection (6), the liability of the persons is joint and several.
- (8) An amount payable to the buyer under this section is recoverable as a debt.

## **87 Consequences after transfer if copy of order not given**

- (1) This section applies to a person selling land affected by an order if—
  - (a) the order is made before the person enters into a contract of sale for the land; and
  - (b) the person—
    - (i) fails to give the buyer a copy of the order before the buyer enters into the contract of sale; and
    - (ii) has not, before the transfer day, carried out all the work the person is required to carry out under the order.
- (2) Despite ownership of the land being transferred to the buyer, the person remains liable to carry out the work required under the order.

## **Part 8 Assistance from local government**

### **88 Local government may decide to carry out work**

- (1) This section applies if—
  - (a) QCAT has made an order under this chapter requiring a tree-keeper to carry out work on a tree within a stated period; and
  - (b) the stated period has ended; and

[s 88]

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- (c) not less than 7 days after the end of the stated period, the neighbour—
    - (i) advises the local government of the local government area in which the tree is situated that the tree-keeper has not carried out work on a tree as required by an order made by QCAT; and
    - (ii) asks the local government to take action under this section; and
  - (d) the local government decides to take action under this section.
- (2) Nothing in this section requires a local government to take any action.
- (3) An appropriately qualified person authorised by the local government (an *authorised person*) may enter the tree-keeper's land for either or both of the following purposes—
- (a) to inspect the tree to determine if the work has been carried out as required by the order;
  - (b) to carry out the work if the work has not been carried out as required by the order.

*Examples for paragraph (b)—*

- 1 Some work has been carried out but not in the way required by the order.
  - 2 No work has been carried out.
- (4) 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.

*Note—*

For the requirements for a notice, see section 89.

- (5) However, notice is not required under subsection (4) if—
- (a) the tree-keeper consents to entry; or
  - (b) entry to the land is required because of the existence or likelihood of a serious risk to safety; or



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- (c) entry is required urgently and the chief executive of the local government has authorised, in writing, entry without notice.
- (5A) If an authorised person enters the tree-keeper's land under subsection (5)(b) or (c), the local government must give the tree-keeper a notice of entry to land within 10 business days after the entry is made.
- (5B) An authorised person must enter the tree-keeper's land only to a reasonable extent needed to carry out the work under this section.
- (5C) This section does not authorise entry to a dwelling on the land.
- (6) An authorised person may not enter the tree-keeper's land or inspect or carry out work on a tree unless the authorised person is in possession of an authority and produces the authority if required to do so by the tree-keeper.

*Note—*

For the requirements for an authority, see section 90.

- (7) The costs incurred by the local government in carrying out the work and any administration fee charged by the local government for carrying out the work are charges on the tree-keeper's land as if the costs and fee were unpaid amounts under the *Local Government Act 2009*, section 95 or the *City of Brisbane Act 2010*, section 97.
- (8) In this section—  
***appropriately qualified*** means having the qualifications or experience appropriate for carrying out functions under this section.

## 89 Requirements of notice of intention to enter land and notice of entry to land

A notice under section 88 must—

- (a) be in writing; and

- (b) attach a copy of the relevant QCAT order and section 88; and
- (c) state the following—
  - (i) the section of this Act under which the notice is given;
  - (ii) the name of the tree-keeper to whom it is given;
  - (iii) the land to which the notice applies;
  - (iv) the purpose of the entry;
  - (v) either—
    - (A) for a notice under section 88(4)—the day on which the authorised person is to enter the land; or
    - (B) for a notice under section 88(5A)—the day the authorised person entered the land.

## **90 Requirements of authority to enter land**

The authority under section 88(6) must—

- (a) be in writing and be signed by the chief executive of the local government; and
- (b) state the following—
  - (i) that the authority is issued under this Act;
  - (ii) the name of the person to whom it is issued;
  - (iii) the land to which the authority applies;
  - (iv) that the person has authority to enter the land;
  - (v) the purpose for which the land is being entered;
  - (vi) whether the person has authority to carry out any work required under an order;
  - (vii) the date, not more than 90 days from the date of the authority, on which it expires.

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## Chapter 4      General

### Part 1                      Provisions of general application

#### 91      Substantial compliance is adequate

Substantial compliance with any agreement, notice or order mentioned in this Act is adequate for this Act.

#### 92      Giving documents

- (1) A document may be given to a person in the following ways—
  - (a) leaving it with someone who is apparently an adult living at the relevant address;
  - (b) if there is no-one at the relevant address—leaving it at the relevant address in a position where it is reasonably likely to come to the person’s attention;
  - (c) if the relevant address is within a building or area to which the person who gives the document has been denied access—leaving it at the building or area in a position where it is reasonably likely to come to the person’s attention;
  - (d) posting it to the relevant address.
- (2) In a proceeding, evidence of giving a document may be given orally or by affidavit.
- (3) For this section, a justice may take and receive an affidavit whether or not any matter to which the affidavit relates is pending in any court or QCAT.
- (4) If there are 2 or more joint owners of land and a person can not locate every owner, the document is taken to have been given to all joint owners if the person gives the document to at least 1 of the joint owners under this section.

[s 93]

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(5) This section does not limit the operation of the *Acts Interpretation Act 1954*, part 10.

(6) In this section—

**document** means a notice or a copy of an order under this Act.  
**relevant address**, for a person to be given a document, means the person's usual or last known place of residence or business and includes the person's address as provided by a local government from its records.

### 93 Descriptions in notice

A description of land or a fence, line, boundary or tree in a notice under this Act is adequate if it allows no reasonable doubt about which land, fence, line, boundary or tree is stated or if it is shown that the person given the notice knew the relevant land, fence, line, boundary or tree.

### 94 Right to enter land for work under this Act

- (1) A person may enter land owned by another person (the **other owner**) if—
  - (a) the person has agreed with the other owner to carry out fencing work or work relating to trees (the **relevant work**); or
  - (b) QCAT has ordered that the relevant work be carried out by the person.
- (2) At least 7 days before entering the other owner's land, the person must give the other owner, and any lessee of the land that the person is aware of, a written notice of the person's intention to enter the land to carry out the relevant work.
- (3) An employee or agent of the person may enter the land if the person complies with subsection (2).
- (4) The person or the person's employee or agent must enter the other person's land only at a reasonable time and only to a reasonable extent needed to carry out the relevant work.

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- (5) This section does not authorise entry to a dwelling on the land.
  - (6) This section does not apply—
    - (a) to the person if the other owner gives permission under section 57; or
    - (b) to a local government if the local government decides to take action under section 88.

## **Part 2                      Miscellaneous**

### **95            Regulation-making power**

The Governor in Council may make regulations under this Act.

### **96            Approved forms**

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

### **97            Review of Act**

- (1) The Minister must review the operation and effectiveness of this Act.
- (2) The review must start no later than 3 years after the commencement of this section.
- (3) The objects of the review include—
  - (a) deciding whether the objects of the Act remain valid; and
  - (b) deciding whether this Act is meeting its objects; and
  - (c) investigating any specific issue recommended by the Minister.
- (4) The Minister must, within 6 months after finishing the review, table a report about its outcome in the Legislative Assembly.

## Chapter 5 Transitional provision for Act No. 25 of 2011

### 98 Notices, proceedings and orders under Dividing Fences Act 1953

- (1) The repealed Act applies to an existing notice, a proceeding about an existing notice, an existing proceeding or an existing order as if this Act had not been enacted.

- (2) In this section—

*commencement* means the commencement of this section.

*existing notice* means a notice given under the repealed Act not more than 6 months before the commencement.

*existing order* means an order made under the repealed Act.

*existing proceeding* means a proceeding that—

- (a) was started under the repealed Act before the commencement; and
- (b) that immediately before the commencement, had not been withdrawn, dismissed, struck out or otherwise disposed of under the repealed Act.

*repealed Act* means the *Dividing Fences Act 1953* as in force immediately before the commencement.

## Chapter 6 Repeal

### 99 Repeal of Dividing Fences Act 1953

The Dividing Fences Act 1953 2 Eliz 2, No. 7 is repealed.

## Chapter 7      **Transitional provisions for Economic Development and Other Legislation Amendment Act 2019**

### **100      Definitions for chapter**

In this chapter—

*amending Act* means the *Economic Development and Other Legislation Amendment Act 2019*.

*relevant tree* means a tree planted or maintained under a condition of a PDA development approval under the *Economic Development Act 2012*.

### **101      Particular notices given under s 57**

- (1) This section applies to a notice given under section 57(2) to a tree-keeper and in effect immediately before the commencement if—
  - (a) the notice is in relation to a relevant tree; and
  - (b) the tree-keeper has not, immediately before the commencement, complied with the notice.
- (2) The notice continues to have effect as if the amending Act had not been enacted.
- (3) Chapter 3, part 4 applies in relation to the notice as if the amending Act had not been enacted.

### **102      Particular applications under s 62**

- (1) This section applies in relation to an application made to QCAT under section 62(1) if the application—
  - (a) was made, but not decided, before the commencement; and
  - (b) is in relation to a relevant tree.

- (2) QCAT must hear, or continue to hear, and decide the application under chapter 3, part 5 as if the amending Act had not been enacted.
- (3) Chapter 3 applies in relation to the application, and an order made in relation to the application, as if the amending Act had not been enacted.

### **103 Particular orders made by QCAT**

- (1) This section applies to an order made by QCAT under chapter 3, part 5, division 3 if the order—
  - (a) was in effect immediately before the commencement; and
  - (b) is in relation to a relevant tree.
- (2) The order continues to have effect as if the amending Act had not been enacted.
- (3) Chapter 3 applies in relation to the order as if the amending Act had not been enacted.



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# Schedule Dictionary

## section 4

***adjoining land***, for chapter 2, see section 15.

***adjoining owners***, for chapter 2, see section 15.

***affected by a tree***, for chapter 3, see section 46.

***agricultural land***, for chapter 2, see section 18.

***application***, for chapter 3, part 7, see section 82.

***approved form*** means a form approved by the chief executive under section 96.

***authorisation***, for chapter 2, see section 17.

***branch***, of a tree, includes any part of the tree (for example, fruit, flowers or twigs) that is attached to a branch after the point where the branch extends from the trunk.

***common boundary***, for chapter 2, in relation to adjoining land consisting of 1 or more parcels of land separated by a watercourse, lake or other natural or artificial feature insufficient to stop the passage of stock at all times, includes the bed and banks of the watercourse, lake or other feature separating the lands.

***destroy***, for a tree, for chapter 3, see section 51.

***development approval*** means—

- (a) a development approval under the *Planning Act 2016*; or
- (b) a PDA development approval under the *Economic Development Act 2012*.

***dividing fence***, for chapter 2, see section 12.

***fence***, for chapter 2, see section 11.

***fencing work***, for chapter 2, see section 16.

**government authority** means a department, statutory body, government owned corporation, rail government entity under the *Transport Infrastructure Act 1994* or local government.

**injury**, for chapter 3, includes a severe allergic reaction.

**land affected by an application or order**, for chapter 3, part 7, see section 82.

**licence area**, for chapter 2, see the *Forestry Act 1959*, schedule 3.

**neighbour**, for chapter 3, see section 49.

**obsolete order** means an order under chapter 3 that has lapsed or been repealed.

**order**, for a sale of a person's land affected by an order, for chapter 3, part 7, see section 82.

**owner**, for land, for chapter 2, see section 14.

**pastoral land**, for chapter 2, see section 18.

**plantation licensee**, for chapter 2, see the *Forestry Act 1959*, schedule 3.

**plantation sublicensee**, for chapter 2, see the *Forestry Act 1959*, schedule 3.

**prescribed rural land**, for chapter 2, see section 18.

**real estate agent** means a real estate agent under the *Property Occupations Act 2014*.

**residential development**, for chapter 2, means a subdivision of land creating allotments or lots intended for residential land.

**residential land**, for chapter 2, see section 18.

**retaining wall** means a structure that supports excavated or filled earth.

**road** means—

- (a) an area of land dedicated to public use as a road; or

- (b) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
- (c) a bridge or culvert; or
- (d) a pedestrian or bicycle path; or
- (e) a part of an area, bridge, culvert or path mentioned in paragraphs (a) to (d).

**rural land** means rural land under the *Land Valuation Act 2010*.

**situated**, for chapter 3, see section 47.

**State plantation forest**, for chapter 2, see the *Forestry Act 1959*, schedule 3.

**sufficient dividing fence**, for chapter 2, see section 13.

**transfer day**, for the sale of land, means the day the contract of sale settles.

**tree**, for chapter 3, see section 45.

**tree-keeper** see section 48(1).

**unallocated State land**, see the *Land Act 1994*, schedule 6.

**vegetation protection order** means an order made by a local government under a local law to provide for or facilitate the protection of a tree.

**work**, on a tree, for chapter 3, see section 50.