

# Neighbourhood Disputes Resolution Bill 2010

## Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Paul Lucas MP

### Title of the Bill

Neighbourhood Disputes Resolution Bill 2010

### Objectives of the Amendments

The objectives of the amendments to the Neighbourhood Disputes Resolution Bill 2010 (the Bill) to be moved during consideration in detail are:

- To amend Clause 48 (Who is a *tree-keeper*) at Clause 48(1)(e) to delete reference to ‘scheme land’ under the *Body Corporate and Community Management Act 1997* and insert reference to ‘common property for a community titles scheme’ under the *Body Corporate and Community Management Act 1997*.
- To amend Clause 48 (Who is a *tree-keeper*) at Clause 48(1)(f) to delete reference to ‘a parcel of land the subject of’ a plan under the *Building Units and Group Titles Act 1980* and insert reference to ‘common property comprised in’ a plan under the *Building Units and Group Titles Act 1980*.
- To amend Clause 57 (Notice for particular overhanging branches) to clarify its policy intent.
- To amend Clause 88 (Local government may decide to carry out work) to provide that in situations where entry to a property occurs in the absence of a tree-keeper written notice of such entry is given to the relevant person, and to include additional safeguards to protect the rights of the tree-keeper.

- To amend Clause 89 (Requirements of intention to enter land) to provide for a *notice of entry to land* and outline the requirements for the notice to include the day the authorised person entered the land.

## Reasons for the Amendments

### 1. Clause 48 (1)(e) and Clause 48(1)(f)

The meaning of tree-keeper is central to Chapter 3 of the Bill which deals with trees. A tree-keeper is limited to the holders of the property interests specified in Clause 48 (Who is a *tree-keeper*).

- Clause 48(1)(e) provides that if the land on which the tree is situated is scheme land, the body corporate for the community titles scheme under the *Body Corporate and Community Management Act 1997* (the scheme) is the tree-keeper. It is the intention of this clause to only capture the owners of common property. The registered owners of individual lots in the scheme are included in Clause 48(1)(a).

To avoid possible duplication and clarify the intention of this clause, the reference to 'scheme land' is deleted and reference to 'common property for a community titles scheme' is inserted.

- Clause 48 (1)(f) provides that if the land on which the tree is situated is a parcel of land the subject of a plan under the *Building Units and Group Titles Act 1980* (the plan), the tree-keeper is the body corporate for the plan. It is the intention of this clause to only capture the owners of common property. The registered owners of individual lots in the plan are included in Clause 48(1)(a).

To avoid possible duplication and clarify the intention of this clause, the reference to 'a parcel of land the subject of a plan' is deleted and reference to 'common property comprised in' the plan is inserted.

### 2. Clause 57 (Notice for particular overhanging branches)

The Bill establishes a new notice system in Part 4 (Removal of overhanging branches) - Clauses 55 to 58. If a neighbour wants the tree-keeper to cut and remove the overhanging branches of the tree-keeper's tree the neighbour can serve a "Notice for overhanging branches" (the Notice) upon the tree-keeper.

Clause 57 of the Bill sets out the circumstances in which the notice can be given, that is, the branches must intrude more than 50cm onto the adjoining land and be less than 2.5m above the ground. This would remove branches likely to interfere with the passage of a person or vehicle. The maximum amount recoverable by a neighbour from a tree-keeper under the new Notice system is \$300.00 per annum.

The amendment clarifies further that only one notice can be given to a tree-keeper by a neighbour in any 12 month period and the neighbour may not give the notice if the neighbour has given another notice within the previous 12 months for any tree.

3. Clause 88 (Local government may decide to carry out work) and Clause 89 (Requirements of notice of intention to enter land)

Clause 88 of the Bill operates as an enforcement tool for a neighbour who has obtained an order against a tree-keeper from the Queensland Civil and Administrative Tribunal (QCAT) about a tree, and the tree-keeper has failed to comply with the order. This clause provides that at the request of the neighbour, a local government may elect to inspect whether the QCAT order has been complied with and carry out work on a tree in accordance with the terms of the order.

Clause 88 permits an appropriately qualified person authorised by the local government to enter a tree-keeper's land in order to inspect the tree to determine if the work has been carried out as required by the order, and carry out the work if the work has not been carried out as required by the order. If there is a likelihood of a serious risk to safety, or entry is required urgently, entry can occur without notice.

The purpose of the proposed amendments to Clause 88 and Clause 89 is to ensure that appropriate safeguards are in place to protect the rights of the tree-keeper in situations where entry to a property occurs without notice.

The amendments require that a written notice of entry to land is subsequently given to the tree-keeper stating the identity of the authorised person who entered the place, the purpose for which the place was entered, and the date of entry.

The conditions of entry are clarified further to include that an authorised person must enter the tree-keeper's land only to a reasonable extent needed to carry out the work under Clause 88 and that Clause 88 does not authorise entry to a dwelling on the land.

Clause 89 (Requirements of intention to enter land) provides for a *notice of entry to land* and outlines the requirements for the notice to include the day the authorised person entered the land.

## **Achievement of the Objectives**

Clause 48(1)(e) – The objectives are achieved by amending Clause 48(1)(e) to provide that a tree-keeper is the body corporate for the community titles scheme where the tree is situated on common property under the *Body Corporate and Community Management Act 1997*

Clause 48(1)(f) – The objectives are achieved by amending Clause 48(1)(f) to provide that a tree-keeper is the body corporate for the plan where the land on which the tree is situated is common property comprised in a plan under the *Building Units and Group Titles Act 1980*.

Clause 57 - The objectives are achieved by amending Clause 57 to provide that a neighbour may not give the written notice to cut and remove the overhanging branches of a tree under Clause 57(2) if the neighbour has given another notice to the tree-keeper or anyone else who is a tree-keeper within the previous twelve months for any tree.

Clause 88 - The objectives are achieved by amending Clause 88 to require that if an authorised person enters the tree-keeper's land because of the existence or likelihood of a serious risk to safety, or entry is required urgently and the chief executive of the local government has authorised in writing entry without notice, the local government must give the tree-keeper a *notice of entry to land* within 10 business days after the entry is made.

Additional safeguards are inserted in Clause 88(5B) and Clause 88(5C) which clarify further conditions of entry. An authorised person must enter the tree-keeper's land only to a reasonable extent needed to carry out the work under the section and it is made clear that the section does not authorise entry to a dwelling the land.

Clause 89 – The objectives are achieved by amending the heading of Clause 89 to insert reference to the 'notice of entry to land'. This notice is required under Clause 88(5A) and is given to the tree-keeper subsequent to entry by an authorised person for the purposes outlined in Clause 88(5)(b) and Clause 88(5)(c). The requirements for the notice of entry to land under Clause 88(5A) are set out in Clause 89(c) and include that such notice include the day the authorised person entered the land.

### **Alternative Ways of Achieving Policy Objectives**

There is no alternative way of achieving the policy objectives other than to amend the Bill.

### **Estimated Cost for Government Implementation**

There is no cost associated with these amendments.

### **Consistency with Fundamental Legislative Principles**

There is no breach of fundamental legislative principles of the *Legislative Standards Act 1992*.

### **Consultation**

Consultation on the amendments to be moved during consideration in detail has occurred with the Community Titles Institute of Queensland Limited, Department of Environment and Resource Management (Land Titles Office) and the Department of Premier and Cabinet.

The Review of Neighbourly Relations found that the majority of the community submissions wanted the tree-keeper to be responsible for all lopping costs and for all costs of maintenance of their trees. The lopping of overhanging branches can cost neighbours thousands of dollars annually and many express anger that they have to pay to maintain trees which do not belong to them. The Bill attempts to balance the needs of the neighbour with the responsibilities of the tree-keeper, taking into account the possibility of limited financial circumstances for both parties.

## **Notes on Provisions**

### **Clause 48(1)(e)**

Clause 48(1)(e) provides that a ‘tree-keeper’ is the body corporate for the community titles scheme where the land on which the tree is situated is common property under the *Body Corporate and Community Management Act 1997*.

### **Clause 48(1)(f)**

Clause 48(1)(f) provides that a ‘tree-keeper’ is the body corporate for the plan where the land on which the tree is situated is common property comprised in a plan under the *Building Units and Group Titles Act 1980*.

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

Clause 57(5) provides that only one notice can be given by a neighbour to a tree-keeper or anyone else who is a tree-keeper in any 12 month period.

The neighbour may not give the notice for any tree if the neighbour has already given another notice to the tree-keeper or anyone else who is a tree-keeper within the previous 12 months.

The maximum amount that can be recovered from a tree-keeper by a neighbour under the notice system is \$300.00 in any twelve month period.

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

Clause 88 (5A) provides that if an authorised person enters the tree-keeper’s land because of the existence or likelihood of a serious risk to safety or entry is required urgently and the chief executive of the local government has authorised in writing entry without notice, the local government must give the tree-keeper a ‘Notice of entry to land’ within 10 business days after the entry is made.

Clause 88 (5B) provides that an authorised person must enter the tree-keeper’s land only to a reasonable extent needed to carry out the work under this section.

Clause 88 (5C) provides that Clause 88 does not authorise entry to a dwelling on the tree-keeper’s land.

### **Clause 89 – Requirements of notice of intention to enter land**

The heading for Clause 89 is amended to add a ‘Notice of entry to land’ which is given under Clause 88(5A).

Clause 89(c)(v)(A) states that for a notice issued under Clause 88(4) the notice must include the day on which the authorised person is to enter the land.

Clause 89(c)(v)(B) states that for a notice issued under Clause 88(5A) the notice must include the day the authorised person entered the land.

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