

TREE DISPUTES

A self-help kit about neighbourhood tree disputes

Please note ...

In respect to neighbourhood disputes about trees, fences or retaining walls, Caxton Legal Centre Inc. is able to provide general legal information and referrals but does not give legal advice about neighbourhood disputes in relation to trees, fences or retaining walls. Neighbourhood mediation is provided free of charge by the [Queensland Government's dispute resolution centres](#). The South Queensland Dispute Resolution Centre is located at Level 1, 363 George Street, and you can call them on (07) 3738 7000 or 1800 017 288 (toll free outside Brisbane).

If you require legal assistance to resolve your dispute or for more detailed information, please contact a private solicitor. We maintain a [private solicitor list](#) for the greater Brisbane area, available on our Caxton Legal Centre website. Contact details for other solicitors can be obtained from the [Queensland Law Society](#).

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Disclaimer

This publication is intended to give general information about the subject of law that it deals with. While every effort has been made to ensure accuracy, the law is constantly changing. No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.

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The laws contained in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (Qld) (Neighbourhood Disputes Act) are designed to help neighbours find better ways to resolve their disputes about dividing fences and trees.

This kit deals only with tree disputes. For information about fencing disputes, refer to Caxton's *Dividing Fences* kit.

Under the Neighbourhood Disputes Act, trees must be properly cared for and safely maintained. This Act provides laws about resolving disputes, trimming trees and obtaining orders about trees. It also sets out a special process for giving notices about tree problems.

There is now an increased focus on encouraging neighbours to try to resolve their disputes by informal dispute resolution and mediation. The Neighbourhood Disputes Act gives power to the Queensland Civil and Administrative Tribunal (QCAT) to deal with tree disputes if they cannot be resolved by the neighbours themselves.

FREQUENTLY ASKED QUESTIONS

What information does this kit provide?

This kit provides general information about the keeping of trees and how tree disputes between neighbours can be addressed. It also explains how to apply to QCAT for an order about trees. If your tree has caused significant property damage, you should consider seeking legal advice from a private lawyer.

See the Queensland Government's *Dispute about fences, trees and buildings* webpage for useful information on avoiding disputes about trees, ways to approach your neighbour and free neighbourhood mediation.

What type of trees and tree disputes are covered by the Act?

The Neighbourhood Disputes Act provides a wide definition of the term 'tree', which includes plants resembling trees, shrubs, vines, bamboo, banana plants, palms and cacti. It also includes a bare trunk, a stump root and a dead tree (see s 45 of the Neighbourhood Disputes Act for definitions).

People are still bound by vegetation and tree protection orders, and information about this can be obtained from local councils.

Tree disputes can involve many different sorts of situations. Some of the more common disputes relate to:

- overhanging branches, which are or may be posing (or are likely to cause within the next 12 months) a serious threat of damage to the neighbouring dwelling/property and/or injury to a person on the land
- invading tree roots, which may be blocking the neighbour's sewerage or damaging their foundations
- overhanging branches dropping leaves, which may be damaging a pool filter or causing overflowing gutters from a roof
- an expanding tree trunk, which has grown to extend across the boundary line between properties and which now may be threatening the stability of a structure on the neighbour's property (e.g. a brick wall of a carport, a retaining wall or a home)
- diseased trees, which may be becoming unstable and which may need to be removed
- dangerous dead trees or unsightly tree stumps, which need to be removed.

This list is not a complete list and other scenarios may arise. Each case needs to be considered on its individual facts.

The tree laws do not apply to trees:

- on rural land
- in public parks
- on land that is more than four hectares in size
- planted or maintained for commercial purposes, as a condition of a development approval or under an order of a tribunal or a court.

Who is responsible for maintaining a tree?

The tree keeper now has a defined responsibility to maintain a tree safely and must stop it from damaging or interfering with their neighbour's property (or their neighbour's use and enjoyment of their property). There may be more than one tree keeper, depending on the facts of a case.

Normally, the tree keeper is the registered owner of the land upon which the tree is situated. A body corporate can also be a tree keeper. Section 48 of the Neighbourhood Disputes Act lists other relevant situations such as where property is held under a *Land Act 1994* (Qld) lease.

If the planting of trees was a condition of a development approval, then other rules may apply.

Under the Neighbourhood Disputes Act, residential tenants of property are not liable to contribute to the cost of maintaining a tree as owners are responsible for these costs. Tree disputes raised should be directed to the actual owners of the property.

You can find out the name of the registered owner of land by doing a title search through [Titles Queensland](#) (a fee applies for this type of search).

Who is responsible if the tree is situated on the boundary line?

If the tree was planted on the boundary line by agreement between the property owners at the time, then they are equally responsible for the care and maintenance of the tree.

If the tree was originally planted on one property only, but has grown to expand across the boundary of two or more neighbouring properties, then the responsibility for maintaining the tree remains with the owner of the original property upon which the tree was planted.

What are my options if a tree dispute with my neighbour arises?

Generally, the Neighbourhood Disputes Act provides for three ways in which a person may deal with an issue about a tree affecting their land:

- The old common law remedy known as ‘abatement’ (or ‘self-help’) is specifically preserved under the Neighbourhood Disputes Act. This means that a neighbour can take action to abate a nuisance. That is, they can lop, cut or trim overhanging branches or invading tree roots back to the boundary between the properties.
- Under the Neighbourhood Disputes Act, a new remedy is available. The affected neighbour can now issue a [Notice for Removal of Particular Overhanging Branches](#) (Form 3) (see the sample document) asking the tree keeper to trim or cut and remove the overhanging branches by a set time, which must be at least 30 days after the notice is given. The tree keeper may then respond and fix the problem by the due date listed in the notice. If they do not, the affected neighbour can then remove the branches or have the branches removed and can recover up to \$300 of the removal costs actually spent.

- This notice only applies if the branches are less than 2.5 meters high and extend over the boundary by more than 50 centimetres. If branches are over 2.5 meters high or using the Notice for Removal of Particular Overhanging Branches does not resolve the issue, a person can apply to QCAT for an order about trees using the [Application for a Tree Dispute](#) (Form 51).

How can I find out my neighbour’s name?

Before making a complaint or taking legal action, you should find out your neighbour’s full name. Ways to find out the name include asking the neighbour directly (if it is safe to do so), asking another neighbour or investigating if the neighbour’s landlord, real estate agent or the local council will share it. If the neighbour is the registered owner of the land, it is possible to pay for a current title search of the neighbour’s address, which will also show the name of the landowner.

What if I am a tenant?

It is always worthwhile trying to approach your neighbour to see if they will fix any problems being caused by their trees. If this does not work, tenants should ask their landlord to issue a Notice for Removal of Particular Overhanging Branches to resolve tree disputes. Tenants can then apply to QCAT using the Application for a Tree Dispute if the registered owner of the land has refused to make the application. This could be relevant, for example, if a tenant with young children was particularly concerned that a large dangerous branch overhanging their home or yard poses a serious risk of falling onto the property at any time without warning.

What about selling my land if a dispute is still ongoing?

If you want to sell your house while a tree dispute is still ongoing or when an order has been made but has not been complied with, you can still sell your house; however, you must give the buyer a copy of the QCAT application or order before they sign the contract of sale. After the contract has been signed, the buyer will be added as a party to the QCAT proceeding. They become responsible for ensuring compliance with the order. If you fail to give the buyer the copy of the order, you will remain the person responsible for ensuring compliance with the order.

AVOIDING DISPUTES

Many tree disputes can be avoided through the selection of appropriate trees for planting and through the regular care and maintenance of trees.

If a dispute arises, it is always important to try to have a friendly conversation with your neighbour with a view to resolving a neighbourhood tree dispute amicably. Sometimes your neighbour will be unaware of problems that are worrying you, and they may be only too happy to resolve the problem once it comes to their attention. If you find face-to-face conversations difficult, try writing a friendly note setting out your concerns. You could try getting a quote/s for the work so that you can propose a plan for dealing with the problem.

The Neighbourhood Disputes Act places emphasis on the importance of neighbours resolving problems informally and, if your matter progresses to QCAT, the member will take any informal measures you have used into consideration.

Consider mediation if you do not agree

If you cannot agree straight away, using mediators to help you reach agreement with your neighbour usually is a good way to try to settle a dispute. The tribunal will refer parties to mediation in appropriate cases, which may include disputes about trees. The tribunal's website contains [factsheets about mediation](#) in these matters.

Mediation is where a mediator, who acts as a go-between between you and your neighbour, helps you to arrive at a decision, if possible. Both you and your neighbour must, of course, first agree to mediation.

There are [dispute resolution centres](#) offering free mediation throughout Queensland.

How do we record any agreement?

If you reach a private agreement with your neighbour about resolving the dispute, either informally or through mediation, it is appropriate to put your agreement with the neighbour in writing. This may be recorded on the quote that you have both agreed to accept. That quote should contain details about the work that is to be undertaken regarding the tree.

An agreement should be dated and signed by all relevant owners. It would be wise to get someone to witness your signatures. You should also set out when and how the costs will be paid.

ABATEMENT: A SELF-HELP APPROACH

The abatement rules only allow you to trim or cut the branches or roots back to the boundary line. Before the Neighbourhood Disputes Act was introduced, you were also required to return all the cutting, trimmings and fruit to the neighbour's property. Under this Act, you can still do this, but now you can also dispose of the rubbish yourself. If you do return cuttings to your neighbour, take care not to damage their property in the process. Try to ensure that you neatly stack any cuttings to avoid further conflict.

Trees, especially very old established trees, can be valuable. If, in cutting roots or trimming overhanging tree branches, you accidentally kill the tree or destabilise it so that it then needs to be removed, you may find that your neighbour tries to get compensation from you as a result of the loss of their tree. You may even be ordered to replace the tree, which could be very expensive. Therefore, if you think the tree may be valuable and you have limited gardening experience, you may wish to get advice from an arborist before you take steps to trim or lop the tree in any way.

Obviously, self-help does not mean that you can jump the neighbour's fence and cut down the problem tree. You could be subject to both criminal prosecution and other civil actions if you enter your neighbour's property without authorisation. The tribunal could also order you to pay compensation in such a case.

USING THE NOTICE FOR REMOVAL OF PARTICULAR OVERHANGING BRANCHES

Steps in using the notice to remove branches

Step 1:



Check that the branches are less than 2.5 m high and extend over the boundary by at least 50 cm.

Step 2:



If so, give your neighbour 30 days written notice using the approved Notice for Removal of Particular Overhanging Branches. Attach at least one quote and [ch 3 pt 4 of the Neighbourhood Disputes Act](#).

Step 3:



If your neighbour does not respond or agree to undertake the work themselves within 30 days, cut and remove the branches or pay someone to do so.

Step 4:



If your neighbour refuses to contribute to costs of removal, file a [Form 3 Application for Minor Civil Dispute—Minor Debt](#) in QCAT to recover up to \$300 per year.

If the branches are less than 2.5 meters high and extend over the boundary by at least 50 centimetres you can use the Notice for Removal of Particular Overhanging Branches (see [s 57 of the Neighbourhood Disputes Act](#) for further details).

In the notice you must state a due date at least 30 days after the day the written notice is given by which the branches are to be cut and removed. The notice must also ask the tree keeper to give a written notice advising when someone is going to come onto the neighbouring property to cut and remove branches. This must be done by the day before the work is to be done. You need to be aware that your notice gives permission to the neighbour or their tree lopper to enter your property between 8 am and 5 pm on the day they nominate. Other special requirements are explained in the notes at the end of the notice (see the sample document).

The notice has a section that your neighbour can sign and return to indicate that they will address the problem, either by cutting the branches themselves or arranging for a tree lopper to do so. The notice also

provides options if your neighbour does not agree to cut and remove the branches within the timeframe you have specified. In this circumstance, you may cut and remove the branches yourself or arrange for someone else to do so, and you may recover a maximum of \$300 per year as a debt for reasonable expenses incurred (excluding your own labour).

If the lopping costs are going to be extremely large, you may be better off getting an order from QCAT, requiring the tree keeper to be responsible for the proper and reasonable costs of maintaining their tree.

You should consider public liability insurance coverage issues before giving another party or the tree lopper permission to enter upon your land.

The tree keeper should also check to see that the contractors have insurance.

The Notice for Removal of Particular Overhanging Branches must be accompanied by at least one written quotation stating the estimated cost of the work, as well as a copy of [ch 3 pt 4 of the Neighbourhood Disputes Act](#).

Remember that the notice procedure can only be used once a year.

Recovering costs through the Queensland Civil and Administrative Tribunal

If your neighbour refuses to remove the branches within the time specified in the Notice for Removal of Particular Overhanging Branches and you pay for the work, you can take steps to have expenses that you have incurred recovered through proceedings in QCAT. The maximum amount you can recover is \$300 per year.

The form to complete is called the Form 3 Application for Minor Civil Dispute—Minor Debt (see the sample document). The application must include a copy of all relevant documents such as receipts for the expenses for which you are seeking to be reimbursed (see [Going to the Queensland Civil and Administrative Tribunal](#) below for more information).

USING THE APPLICATION FOR A TREE DISPUTE

Steps in using an application for tree disputes

Step 1:



Check that the branches are less than 2.5 m high or proceed if the Notice for Removal of Particular Overhanging Branches has not resolved the dispute.

Step 2:



Complete and file a Form 51 Application for Tree Dispute. Lodge the application, pay the filing fee and serve the application on your neighbour.

Step 3:



Participate in mediation in QCAT, if you are directed to attend. Appear at the hearing and ask for orders to resolve the tree dispute.

If branches are over 2.5 meters high or using the Notice for Removal of Particular Overhanging Branches does not resolve the issue, you can also apply to QCAT for an order about trees using an Application for a Tree Dispute (see the sample documents).

The tribunal does not apply strict rules of evidence, but it is still important to provide your best evidence of relevant matters to help the tribunal make its decision. Photographs, copies of relevant property plans, arborist's reports and engineering reports can be particularly useful in these types of cases.

The safety of any person is the most important consideration for QCAT. The tribunal is required to consider a number of factors, which are set out in ss 73-75 of the [Neighbourhood Disputes Act](#). Where the tree might cause or is causing serious injury or damage, QCAT will look at conduct that has contributed to the problem and previous steps that have been taken to prevent or rectify the problem (s 74 Neighbourhood Disputes Act).

Other considerations may include:

- if you have tried to resolve the dispute through any other means
- if something other than the tree may have caused or contributed to the problem
- the potential impact of any maintenance works
- if the tree was there before you bought your land
- the type of tree in question and the impact of any pruning
- risks associated with the tree in an extreme weather event
- the tree's historical, cultural, social, heritage or scientific value
- the contribution of the tree to the local ecosystem, landscape and public amenity.

The tribunal can make a wide variety of orders about trees:

- stating what maintenance work is required to be done in relation to the tree/s and who is to be responsible for the cost of the work
- stating what ongoing maintenance work on trees is required in the future in order to avoid future disputes arising
- granting compensation in appropriate cases for damage done to property or land
- requiring a tree to be removed (although it should be noted that this will always be a last resort)
- requiring a survey to be undertaken to work out the tree's location in relation to the boundary
- requiring certain costs to be paid to enable the order to be carried out
- requiring a tree to be replaced
- appointing a tree assessor (a qualified and experienced arborist) to visit the relevant tree site and provide a report on the tree, which they will then consider as expert evidence
- ordering you to pay between \$500 and \$1000 of the tree assessor's costs, if they were ordered by QCAT, in accordance with [Practice Direction No. 7 of 2013](#).

The tribunal cannot make an order about work on a tree if such work is restricted or prohibited by another Act. It can make some orders, however, even though the tree is protected under local laws or is subject to a vegetation protection order. You can check the Queensland Heritage Register and check with your local council to find out if the relevant tree is protected.

It is unlikely that the tribunal members hearing your case in QCAT will be able to go for a site visit to view the tree/s in question, so it is extremely important for you to explain your position very clearly. You should obtain a proper arborist's or engineer's report if this is going to be important in your case. You should also ensure that you can provide good quality photographs of the tree and property damage if this is relevant.

GOING TO THE QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

Which tribunal or court will hear my case?

In most cases, you can make an application to QCAT to resolve your tree dispute. The tribunal is a specialist tribunal, which is more informal than a normal court. It has jurisdiction (or power) to hear a variety of minor civil disputes (e.g. tree and fencing disputes under the Neighbourhood Disputes Act or simple debt disputes, disputes between consumers and traders, and motor vehicle property damage claims) up to \$25 000 in value.

The tribunal must deal with matters in a way that is accessible, fair, just, economical, informal and quick (s 3 *Queensland Civil and Administrative Tribunal Act 1999* [Qld]) and parties generally bear their own costs. 'Parties bearing their own costs' means that, whether they win or lose, parties in QCAT usually pay for their own legal representation if they chose to and are permitted to have it.

Complicated disputes may need to proceed in the Magistrates, District or Supreme Court, depending on the particular facts of the case and the exact nature of the claim. Proceedings in these courts may involve considerable expense in legal fees, involve more complicated forms and processes and carry the risk of a costs order being made against an unsuccessful party. Seek legal advice if your case is complex.

You must make sure that the court or tribunal has the power to make a decision about land in your area. This depends on precisely where your property is situated. Before you go to the tribunal or court to file your documents, you should telephone QCAT or the Magistrates Court and confirm that you are lodging your application in the most appropriate locality. Magistrates in regional areas can also act as members of QCAT providing easy access for clients in regional areas. You can also apply to attend your hearing via telephone or video-conferencing.

How to make an application in the Queensland Civil and Administrative Tribunal

The kind of application you make will depend upon whether you need to make an Application for Minor Civil Dispute—Minor Debt or an Application for a Tree Dispute.

You should file an Application for a Tree Dispute to resolve disputes about branches over 2.5 meters high, or if the Notice for Removal of Particular Overhanging Branches has not resolved the dispute.

You can file an Application for Minor Civil Dispute—Minor Debt to recover up to \$300 per year in reasonable branch removal expenses (excluding your own labour) as a debt, but only after giving your neighbour the Notice for Removal of Particular Overhanging Branches.

You must include copies of all relevant documents in your application including quotes or receipts for the costs of any property damage, tree cutting, tree removal or arborists. Copies of any written communication between your neighbour and yourself in relation to the issue, photographs and any other documents that are relevant should also be included.

You will need to lodge multiple copies of the entire application and support documents with QCAT. See the instructions on the application forms for details of exactly how many copies you need.

There are instructions and a checklist for completing each application. Make sure you check the application and QCAT website to get the most current information. The QCAT registry or member may impose time limits for taking certain steps and you need to make sure you comply with these time limits.

What to do next?

You should then lodge the application and the required number of copies at QCAT for filing. The filing fee for these disputes in QCAT is currently \$358 for an Application for a Tree Dispute and \$27.90 for an Application for Minor Civil Dispute—Minor Debt (for debts less than \$500).

You can lodge your application in person or by mail and you will need to either enclose your cheque or money order for the filing fee, or provide a credit card payment authorisation. You can pay by cash if you lodge your application in person. Once filed, the application will be referred to mediation before it is allocated a hearing date.

Who tells my neighbour about the application?

Once the application has been filed, you will be notified of details about when and where the tribunal will hear the matter. You will need to give (or serve) a copy of the

stamped application, including the details about what will happen next (which may be in the form of a letter or on the application itself), to your neighbour. You can serve your neighbour by:

- giving it to the owner personally, including by putting it down in their presence and saying what it is
- leaving it at their usual place of residence with another adult who appears to live there
- posting it to their residential address if the person lives more than 50 km from the Brisbane QCAT registry or a Queensland Magistrates Court registry.

Time limits apply to when you must serve your documents:

- seven days from when the Application for a Tree Dispute is filed
- 28 days from when the Application for Minor Civil Disputes—Minor Debt is filed.

You will find a lot of helpful [information about these processes](#) on the QCAT website.

In the case of the Application for a Tree Dispute you must establish that the application has been given to the relevant people by filing a [Form 9 Affidavit of Service](#) available on the QCAT website or from the registry.

Is mediation compulsory in QCAT for tree disputes?

The tribunal will refer most matters under the Neighbourhood Disputes Act to mediation before they progress to a hearing. The purpose of mediation is to try and settle the dispute before the application is decided by a hearing.

The referral to mediation can be made with or without the parties' consent. If you and your neighbour are directed to attend mediation, it is compulsory to attend and you must act reasonably and genuinely during the mediation. If you have reasons for not wishing to participate in mediation, you can write to the QCAT alternative dispute resolution manager. See the [QCAT factsheet *Mediation of minor civil disputes—fencing matters*](#) for contact details and more information.

The mediation must normally be conducted in private, and may be conducted by a member, adjudicator or principal registrar of QCAT or an approved dispute resolution centre mediator.

You can also arrange mediation yourself prior to making a QCAT application. The dispute resolution centres of the

Department of Justice and Attorney-General provides free mediation services.

If the mediation is not successful, you will be given a date for a hearing.

How will you know about the date of the hearing?

The tribunal will either make a note of your hearing date on your application when you file your case or send you a copy of a notice advising you of a hearing date.

Will my neighbour need to do anything before the hearing?

Your neighbour may wish to file a counter-application, a [Response to Application for a Tree Dispute](#) (Form 52), where they can set out the alternative orders they will be seeking from QCAT.

The counterclaim for a Minor Civil Dispute—Minor Debt is a [Form 8 Minor Civil Dispute—Counter Application](#).

What happens at the hearing?

The decision makers in QCAT cases are called members of the tribunal. Some members may be judges, but most are lawyers appointed to sit simply as members in QCAT hearings. The tribunal member will hear your story and your neighbour's story and will then make a decision about your case.

You should take with you the originals of your quotes, reports and any other relevant documents. Photographs of trees, boundary lines and damaged structures can be quite useful when you are explaining tree disputes, and these can be handed up to the members as you explain your case.

The tribunal will hear both parties and will then make a decision about the matter. These matters are often dealt with very quickly, sometimes in only 15 to 30 minutes. This is not a lot of time for both parties to explain their cases. Try writing out a list of your arguments to refer to when you are telling the members about your case. Make sure you can easily refer the tribunal to your documents and other evidence, for example by numbering them and providing an index.

Register of orders

The tribunal has created a [register of orders made about trees](#) and this is publicly available on the QCAT website. The register includes any order affecting land, the

timeframe in which orders must be complied with and the names of the parties responsible for carrying out the order.

Enforcement of orders

Tribunal orders are enforceable. If an order is being ignored by the relevant party, then you should seek legal advice about how to enforce the order.

A person can be fined heavily if they fail to comply with an order without a reasonable excuse. Orders usually last for 10 years, unless QCAT specifically orders something different.

You may find it useful to read some of the recent decisions that have been made in QCAT about tree disputes. You can find these on the [Supreme Court website](#), typing 'tree disputes' into the keyword search function.

CONTACT POINTS

CAXTON LEGAL CENTRE

1 Manning Street
South Brisbane Qld 4101
Tel: (07) 3214 6333

www.caxton.org.au

BRISBANE MAGISTRATES COURT

1st Floor, Central Courts Building
363 George Street
Brisbane Qld 4000
Tel: (07) 3247 5598

Other magistrates courts are listed at
www.courts.qld.gov.au

QUEENSLAND ARBORICULTURAL ASSOCIATION

www.qaa.net.au

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

Level 9 Bank of Queensland Building
259 Queen Street
Brisbane Qld 4000

GPO Box 1639
Brisbane Qld 4001
Tel: 1300 753 228

Email: enquiries@qcat.qld.gov.au
www.qcat.qld.gov.au

Factsheets are available online.

QUEENSLAND GOVERNMENT

Disputes about fences, trees and buildings.

[www.qld.gov.au/law/housing-and-neighbours/
disputes-about-fences-trees-and-buildings](http://www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings)

QUEENSLAND HERITAGE REGISTER

www.apps.des.qld.gov.au/heritage-register/

QUEENSLAND TITLES REGISTRY

[www.qld.gov.au/housing/buying-owning-home/property-
search](http://www.qld.gov.au/housing/buying-owning-home/property-search)

Tel: 1300 255 750

SOUTH QUEENSLAND DISPUTE RESOLUTION CENTRE

Department of Justice and Attorney-General
Level 1, 363 George Street
Brisbane Qld 4000

GPO Box 149
Brisbane Qld 4001
Tel: (07) 3239 6007 or 1800 017 288
www.qld.gov.au

Other dispute resolution centres in Queensland are listed at www.qld.gov.au

SAMPLE DOCUMENTS

The information in these sample documents is an example only. Individuals have to complete the forms with their own personal details and information.

NOTICE FOR REMOVAL OF PARTICULAR OVERHANGING BRANCHES

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Chapter 3 Part 4

**THIS NOTICE ONLY APPLIES TO BRANCHES THAT EXTEND AT LEAST 50CM FROM THE
COMMON BOUNDARY AND THAT ARE 2.5M OR LESS ABOVE THE GROUND**

To:

Address:

Please take notice that I am asking you (the tree-keeper) to cut and remove the overhanging branches of the tree situated on your land at:

(Insert description of land e.g. street address, lot number or other identifying particulars)

which overhang my land at:

(Insert description of land e.g. street address, lot number or other identifying particulars)

Please carry out this work on or before the:

(Date must be at least 30 days after day this notice is given to the tree-keeper)

Location of the tree:

(Describe location of tree on the tree-keeper's land)

Description of tree:

(Describe the tree – this does not have to be a botanical description)

I propose that the work on the tree be carried out to the common boundary line of the adjoining lands described above.

The following documents are attached to this notice in accordance with the requirements of Chapter 3 Part 4 s57(3)(d) of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*:

1. A copy of one (1) written quotation which states that the estimated cost of work on the tree is:

\$

(The tree-keeper may obtain an independent quote, do the work themselves, or hire a contractor of their choice).

FORM 3: NOTICE FOR REMOVAL OF PARTICULAR OVERHANGING BRANCHES
Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Chapter 3 Part 4

2. A copy of Chapter 3 Part 4 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

If you **agree** to cut and remove the overhanging branches, please complete the attached 'Response to Notice for Removal of Particular Overhanging Branches' and return a signed copy to me **at least one (1) day** before anyone enters my land to cut and remove the branches.

The 'Response to Notice for Removal of Particular Overhanging Branches' must state the name of the person who will cut and remove the overhanging branches and the day on which the work will be carried out.

I/We give permission to you or your contractor to enter my land to cut and remove the overhanging branches on the day and time advised by you in your 'Response to Notice for Removal of Particular Overhanging Branches'.

If you **do not agree** to cut and remove the overhanging branches within the time specified above, then section 58 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* provides that I may cut and remove the overhanging branches, or arrange for someone else to cut and remove the overhanging branches and recover a maximum of \$300.00 per annum as a debt for reasonable expenses incurred by me in cutting and removing the overhanging branches (this does not include the cost of my/our labour).

Name:

Address:

Signature/s:

M. Heslop

Date:

FORM 3: NOTICE FOR REMOVAL OF PARTICULAR OVERHANGING BRANCHES
Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Chapter 3 Part 4**Notes:**

Section 56(1) of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (the Act) encourages tree-keepers and neighbours to resolve tree issues informally.

Section 57(1) applies only if the branch extends to a point over the neighbour's land that is more than 50cm from the common boundary and only to the extent the branch is 2.5m or less above the ground.

Section 57(3)(b) of the Act requires that the neighbour must ask the tree-keeper to give a written notice no later than the day before anyone enters the neighbour's land to cut and remove the branches that states the person who will cut and remove the overhanging branches and the date and time when the work will be carried out. The work must be carried out at a time at least 30 days after the date the notice is given and between the hours of 8.00am and 5.00pm or as otherwise agreed.

Section 57(3)(c) of the Act requires that the neighbour must give permission to the tree-keeper or the tree-keeper's contractor to enter the neighbour's land on the day advised to cut and remove the overhanging branches.

It is the neighbour's responsibility to consider public liability insurance before giving a person permission to enter the neighbour's land.

It is the tree-keeper's responsibility to consider contractor's insurance before engaging a contractor to carry out work on a tree.

A copy of the Act may be accessed at www.legislation.qld.gov.au.

PLEASE KEEP A COPY OF THIS NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS NOTICE WAS GIVEN TO YOUR NEIGHBOUR.

RESPONSE TO NOTICE FOR REMOVAL OF PARTICULAR OVERHANGING BRANCHES

I/We hereby agree to the your proposal contained in the 'Notice for Removal of Particular

Overhanging Branches' dated:

and given to me/us on the:

by:

of:

The name of the person/contractor who will cut and remove the overhanging branches is:

Name:

Address:

The work on the tree will be carried out on the 15 / 07 /2022 at 10 am/pm.

Name:

Address:

Signature/s:

Date:

PLEASE KEEP A COPY OF THIS NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS AGREEMENT WAS GIVEN TO YOUR NEIGHBOUR.

Instructions for completing**Application for tree dispute – *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*****What type of application are you making?**

A tree dispute is a disagreement between neighbours about a tree or trees on adjoining properties.

A dispute about the recovery of the reasonable expenses incurred by a neighbour in cutting and removing overhanging branches (up to a maximum of \$300) is a debt dispute. If you want to recover this debt, you should complete an *Application for Minor Civil Dispute – minor debt* form (available from www.qcat.qld.gov.au or by calling 1300 753 228).

General instructions**Copies of the application****You need to lodge at QCAT:**

- your original application and any attached documents
- plus 2 copies of the original application and any attached documents
- plus an extra copy for the respondent
- plus an extra copy for each other person who is required to be given a copy.

The people who are required to be given a copy of your application are:

- the tree-keeper (the respondent)
- a government authority, if the work you are requesting needs the consent or authorisation of that government authority
- any other person who might be affected by an order
- any occupier of the respondent's land
- the registered owner of the land, if they are not also the respondent or the occupier
- a buyer of your land.

Applications may be lodged

By post: QCAT, GPO Box 1639, Brisbane QLD 4001

If you are posting your original application and copies to QCAT, you need to include a stamped self-addressed A4 envelope with your application.

In person: At QCAT, Level 11, 259 Queen Street (BOQ Centre), Brisbane OR any Magistrates Court.

To find your nearest Magistrates Court, look under "Justice and Attorney-General" in the phone book or visit www.courts.qld.gov.au.

Applications must be accompanied by the prescribed application fee

You must pay the prescribed application fee when you lodge your application. For more information on fees visit www.qcat.qld.gov.au or call 1300 753 228.

Payment can be made by cash (only when application being lodged in person), cheque or money order (payable to Department of Justice and Attorney-General), or credit card payment authorisation (see *Credit card payment authorisation form* available from www.qcat.qld.gov.au or by calling 1300 753 228 – MasterCard and Visa accepted).

Instructions for completing (continued)

After you lodge your application

QCAT will keep your original application and attached documents, and 1 extra copy.

QCAT will stamp QCAT's seal on the copies and return them to you.

One copy is for you and you need to give the other stamped copies to the respondent and to each other person who is required to be given a copy.

Providing copies to the respondent and other parties

You must give the stamped copies of the application as soon as practicable, and no later than 7 days after you lodge the application.

The most common ways to give the stamped application to the respondent and any other party is by:

- posting it to their address
- giving it to them in person, or if they refuse to take it, by putting it down in their presence and telling them what the application is
- leaving it with another adult who lives or works at their address

You cannot give the stamped application to the respondent or any other party by leaving it in their letterbox or putting it under the door.

You will need to establish that the application has been given to the respondent and each other person who is required to be given a copy by filing a Form 9 Affidavit of Service, or a written acknowledgement from each person that they have received the application.

PART A APPLICANT'S AND RESPONDENT'S DETAILS

- More than one applicant and respondent may be named in the application. If there is not enough space to include additional parties, attach additional pages with similar details.
- If the applicant or respondent is not an individual then the correct name must be used, for example:
 - a company name
 - a business name, whether registered or unregistered
 - a State agency name, for example a Queensland Government Department.
- Your address will be the address at which documents are given or sent to you, unless you indicate your representative's address as your address for notices.
- If you want to change your address for notices, complete a *Change of contact details* form, file it in the tribunal and serve it on all other parties.

Representative's details

If you want your representative's address as the address for notices, please complete your representative's details.

If you want your representative to represent you in any proceedings before the tribunal you must complete the form *Application for leave to be represented* (available from www.qcat.qld.gov.au or by calling 1300 753 228). Generally the tribunal expects people to represent themselves. It may not grant your request. You must give reasons for why you want to be represented.

You are not required to seek leave if:

- you are a child or a person with impaired capacity
- an Act or the Rules state that you may be legally represented.

PART B GENERAL DISPUTE DETAILS

You should answer all of the questions in this section.

If you are an occupier and the land is recorded in the freehold land register, you can only apply to QCAT if the registered owner of the land has refused to make an application. You should include the registered owner's address and contact details. You must answer the question about whether you have requested the registered owner to make an application about the tree dispute. If the answer to this question is no, then your application will not be accepted.

If there is insufficient space for your answers, please attach additional pages.

PART C HOW YOUR LAND IS AFFECTED BY THE TREE

You should answer any of the questions in this section that you can and provide further details as required.

If there is insufficient space for your answers, please attach additional pages.

PART D FURTHER INFORMATION TO ASSIST THE TRIBUNAL

You should answer any of the questions in this section that you can and provide further details as required.

If there is insufficient space for your answers, please attach additional pages.

PART E DIVIDING FENCE DISPUTES

Different laws may apply to a tree that is also part of a dividing fence. Please tick the relevant boxes and provide details as required.

If there is insufficient space for your answers, please attach additional pages.

PART F DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

State what orders you are seeking from the tribunal and why you consider the orders sought should be made. Please include a clear outline of the history and nature of the dispute.

If there is insufficient space for your answers, please attach additional pages.

Form Number 51 (version 2)

Queensland Civil and Administrative Tribunal Act 2009 (section 33)

Application for a tree dispute – Neighbourhood Disputes (Dividing Fences and Trees) Act 2011

Refer to attached instructions at the front of this application before filling out this form.

Important information for respondents

You may respond to this application by completing and lodging a *Response to application for tree dispute* (available from www.qcat.qld.gov.au or by calling 1300 753 228) within twenty eight (28) days after you are given a copy of the application.

For office use only

Case number:	
Date:	
Registry:	
Sent to:	
Fee paid:	
Rec no:	

PART A APPLICANT'S DETAILS**Name**

<input type="text" value="Ms."/>	<input type="text" value="Muriel"/>	<input type="text" value="Heslop"/>
<small>Title</small>	<small>Given name/s</small>	<small>Surname/Family name</small>

OR**Company**

<input type="text"/>	ABN	<input type="text"/>
----------------------	------------	----------------------

Address

<input type="text" value="3 Manning Street"/>		
<input type="text" value="South Brisbane Qld"/>	Postcode	<input type="text" value="4101"/>

Telephone

<input type="text" value="(07) 3214 633"/>	<input type="text" value="()"/>	<input type="text"/>
<small>Home</small>	<small>Business</small>	<small>Mobile</small>

Fax**Email**

PART A APPLICANT'S DETAILS *(continued)*

Representative's details *(if applicable)*

☐

Tick if you want this to be your address for notices

☐

Tick if you want your representative to represent you in proceedings before the tribunal *(see Part A of the instructions – you may be required to seek the tribunal's leave for this to happen by making an application using the form Application for leave to be represented).*

Name

<input type="text" value="Dr."/>	<input type="text"/>	<input type="text"/>
<i>Title</i>	<i>Given name/s</i>	<i>Surname/Family name</i>

OR

Company

<input type="text"/>	ABN	<input type="text"/>
----------------------	------------	----------------------

Address

<input type="text"/>	<input type="text"/>
<input type="text"/>	Postcode <input type="text"/>

Telephone

<input type="text" value="()"/>	<input type="text"/>
<i>Business</i>	<i>Mobile</i>

Fax

Email

PART A RESPONDENT'S DETAILS

Name

<input type="text" value="Mr."/>	<input type="text" value="Darryl"/>	<input type="text" value="Kerrigan"/>
<i>Title</i>	<i>Given name/s</i>	<i>Surname/Family name</i>

OR

Company

<input type="text"/>	ABN	<input type="text"/>
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Address

<input type="text" value="1 Manning Street"/>	<input type="text"/>
<input type="text" value="South Brisbane Qld"/>	Postcode <input type="text" value="4101"/>

PART A RESPONDENT'S DETAILS *(continued)*

Telephone	(07) 38467483	()	
	<i>Home</i>	<i>Business</i>	<i>Mobile</i>
Fax	()		
Email	darryl.kerrigan@email.com		

PART B GENERAL DISPUTE DETAILS**1. What is your connection with the land affected by the tree?**

- ☒ Registered owner of land (go to question 5)
- ☐ Occupier of land (go to question 2)
- ☐ Body corporate for land (go to question 5)

2. If you are an occupier, please provide the name, address and telephone number of the registered owner of the land you occupy.**Name**

Dr.		
<i>Title</i>	<i>Given name/s</i>	<i>Surname/Family name</i>

OR**Company**

	ABN	
--	------------	--

Address

	Postcode

Telephone

()	
<i>Business</i>	<i>Mobile</i>

Fax

()

Email

--

3. If you are an occupier, have you asked the registered home owner to make an application about the tree dispute?

☐ Yes

☐ No

If Yes, please provide details:

4. Has the registered home owner refused to make an application about the tree dispute?

☐ Yes

☐ No

Please provide details:

5. Have you tried to resolve this dispute with the respondent?

☒ Yes

☐ No

Please provide details:

I have given the respondent a Notice for Removal of Overhanging Branches, and recieved no response within 30 days.

6. Have you tried to resolve this dispute under a local law, or local government scheme or administrative process?

☐ Yes

☒ No

If Yes, please provide details:

7. What kind of land is the tree on?

- ☒ Land recorded in the freehold land register
- ☐ Land subject to a lease or licence
- ☐ Land subject to an occupation permit or stock grazing permit
- ☐ A reserve, other than a reserve for community purposes

8. If the dispute is about overhanging branches, do the branches extend to a point over your land that is 50cm or more from the common boundary?

- ☒ Yes
- ☐ No

If Yes, please provide details:

9. If the dispute is about overhanging branches, are the branches more than 2.5 metres above the ground?

- ☒ Yes
- ☐ No

If Yes, please provide details:

10. What local government area is the tree in?

Brisbane

PART C HOW YOUR LAND IS AFFECTED BY THE TREE

11. Has the tree caused serious injury to any person?

- ☐ Yes
- ☐ No
- ☒ No, but it is likely to within the next 12 months

Please provide details:

The tree is a large Chinese Elm which has been planted close to the boundary fence. It has three large branches

that are at risk of falling. I have had an arborist come and examine the tree and he advised that the branches

show signs that they might fall in strong wind. My grandchildren play in the yard under the tree and I am concerned for their safety.

12. If yes, when did the tree cause the injury?

- ☐ In the past
- ☐ Now

13. Has the tree caused serious damage to your land, or property on your land?

- ☐ Yes
- ☐ No
- ☒ No, but it is likely to within the next 12 months

Please provide details:

I have an outdoor pergola under the largest branch that may be damaged if the branch falls.

14. If yes, when did the tree cause the damage?

- ☐ In the past
- ☐ Now

15. Is there anything other than the tree that has contributed, or is contributing, to the injury or damage?

☐

Yes

☒

No

If Yes, please provide details:

16. Is there anything you have done that has contributed, or is contributing, to the injury or damage?

☐

Yes

☒

No

If Yes, please provide details:

17. Is there anything you could have done, and haven't, that has contributed, or is contributing, to the injury or damage?

☐

Yes

☒

No

If Yes, please provide details:

18. Is there any tree on your land that may have contributed, or is contributing, to the injury or damage?

☐

Yes

☒

No

If Yes, please provide details:

If the work you are seeking involves destroying the tree, please answer questions 19-22. Otherwise go to question 23.

19. How long have you known of the injury or damage?

Please provide details:

20. Has the respondent taken any steps to prevent further injury or damage?

☐

Yes

☐

No

If Yes, please provide details:

21. Have you taken any steps to prevent further injury or damage?

☐

Yes

☐

No

If Yes, please provide details:

22. Is there anything other than the tree that may have caused, or contributed to, some or all of the injury or damage?

☐

Yes

☐

No

If Yes, please provide details:

23. Has the tree caused substantial, ongoing and unreasonable interference with your use and enjoyment of your land?

☐

Yes

☐

No

☒

No, but it is likely to within the next 12 months

Please provide details:

I am concerned for the safety of my grandchildren and anyone else who stands near the branches. I try not to let
the children play in that part of the yard due to the risk of a falling branch. I have stopped using the pergola because
of risk of injury.

24. If yes, when did the interference occur?

☐

In the past

☐

Now

If you answered yes to any of questions 23-24, please answer the following additional questions.

25. Is there anything other than the tree that has contributed, or is contributing, to the interference?

☐

Yes

☒

No

If Yes, please provide details:

26. Has the respondent taken any steps to stop or reduce the interference?

☐

Yes

☒

No

If Yes, please provide details:

27. Have you taken any steps to stop or reduce the interference?

☐

Yes

☒

No

If Yes, please provide details:

28. What is the size of your land?

Please provide details:

410 square metres.

29. Was the tree on the respondent's land at the time you acquired your land?

☒

Yes

☐

No

☐

Don't know

If Yes, please provide details:

30. Are you claiming that the interference is an obstruction of sunlight or a view?

☐

Yes

☒

No

If Yes, please provide details:

If you answered yes to question 30, please answer the following additional question.

31. Does the tree contribute to the protection or revegetation of a waterway or foreshore?

☐

Yes

☐

No

☐

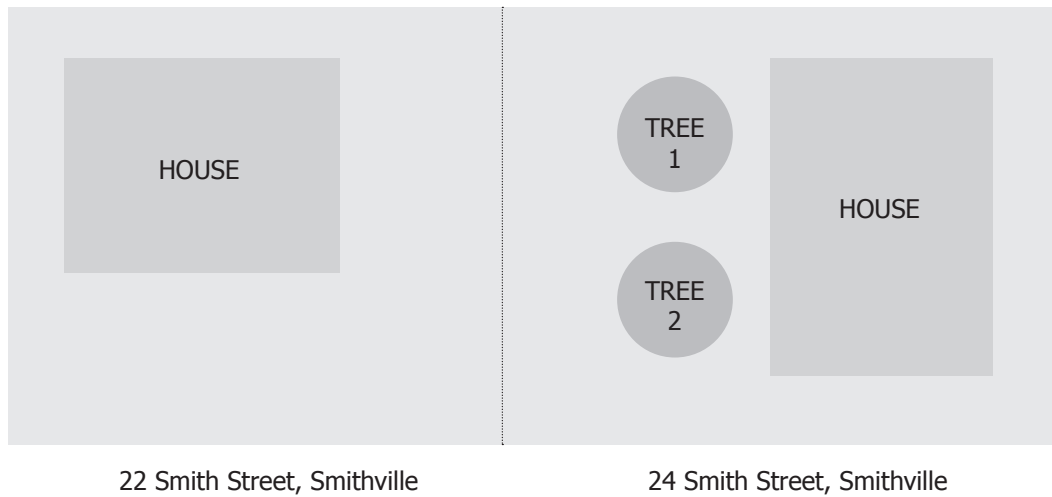
Don't know

If Yes, please provide details:

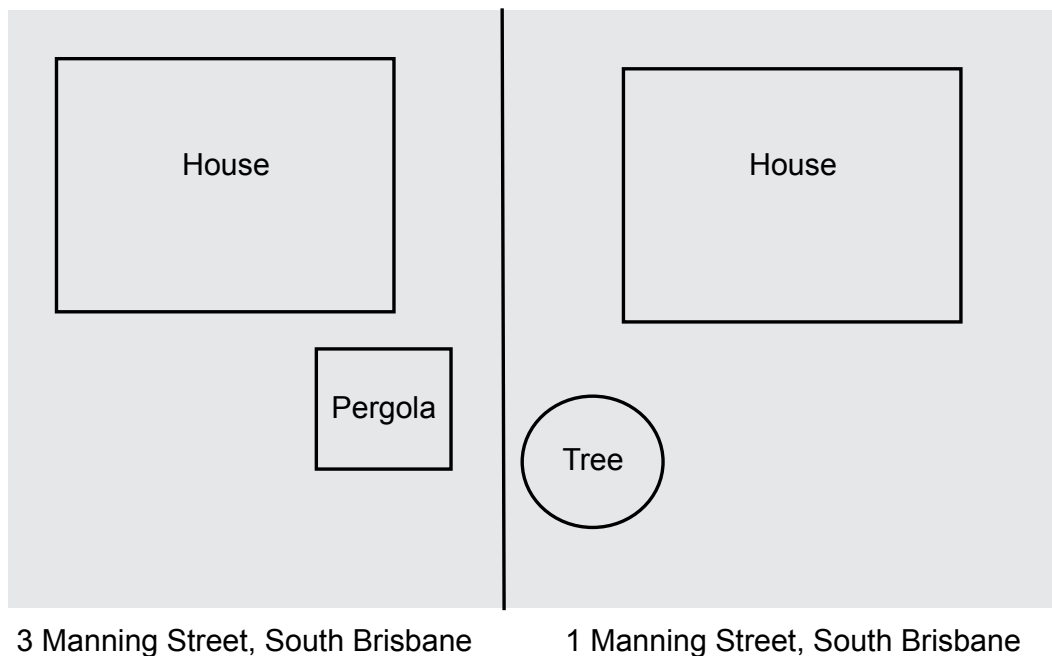
PART D FURTHER INFORMATION TO ASSIST THE TRIBUNAL

32. Please draw a diagram showing the tree, the boundary and any premises, fence or other structure affected by the tree.

Example diagram:



Your diagram:



33. Is any consent or other authorisation from a government authority needed to carry out work on the tree? For example, a local law, the *Nature Conservation Act 1992*, or the *Vegetation Management Act 1999*?

☐ Yes

☒ No

If yes, please provide details:

Note to applicants: A government authority may appear in a proceeding if carrying out work on the tree may require the consent or authorisation of that government authority. The Tribunal may forward this application to government authorities to determine whether such consent or authorisation is required for any work requested in the application.

34. If yes, has this consent or other authorisation been obtained?

☐ Yes

☐ No

If yes, please provide details:

35. To assist the tribunal, please provide any information you have about any of the following matters (please attach additional information as necessary)

- ☐ whether the tree has any historical, cultural, social or scientific value
- ☐ whether the tree contributes to the local ecosystem and to biodiversity
- ☐ whether the tree contributes to the natural landscape and the scenic value of the land or locality
- ☐ whether the tree contributes to public amenity
- ☐ whether the tree contributes to the amenity of the land on which it is situated? For example, to privacy, landscaping, garden design or protection from sun, wind, noise, odour or smoke
- ☐ whether the tree has any impact on soil stability, the water table or other natural features of the land or locality
- ☒ whether there are any risks associated with the tree in the event of a cyclone or other extreme weather event
- ☐ is there any likely impact on the tree if it is pruned, including maintaining it at a particular height, width or shape
- ☒ what kind or species of tree it is: Chinese Elm
- ☒ whether the species of tree is a pest or weed, or is described as a pest or weed in other legislation or a local law.

PART E DIVIDING FENCE DISPUTES

36. Does the tree form part of the dividing fence between your land and the respondent's land?

☐

Yes

☒

No

If yes, please provide details:

37. If the tree has damaged the dividing fence, have you given the respondent a *Notice to contribute for fencing work*?

☐

Yes

☐

No

If yes, please provide details:

38. Have you or the respondent already made an application to QCAT about the dividing fence?

☐

Yes

☐

No

If yes, please provide details:

PART F DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

39. I want the tribunal to make the following order/s: (please tick)

- ☒ an order that the respondent carry out work on the tree
- ☐ to remove the tree
- ☒ to remove or prune the branches of the tree
- ☐ to remove or prune the roots of the tree
- ☐ other tree work
- ☐ an order that a survey be undertaken to show the tree's location in relation to the common boundary
- ☐ an order that the respondent apply for a consent or other authorisation from a government authority in relation to the tree
- ☐ an order that a person can enter the respondent's land to carry out an order
- ☐ an order that a person can enter the respondent's land to obtain a quote to carry out an order
- ☒ an order that the respondent pay the costs for carrying out these orders
- ☐ an order that the respondent pay compensation to you for damage to your land or property in the amount of \$_____
- ☐ an order that an appropriately qualified arborist prepare a report
- ☐ other orders – please provide details (attach additional numbered pages as necessary):

I would like the three overhanging branches cut back to the boundary line and removed.

40. The reasons I consider the order/s sought should be made are (set out reasons in numbered paragraphs and attach additional numbered pages as necessary):

1. The arborists report dated 03/05/2022 states clearly that the three branches pose a risk of falling onto my property in high wind or an extreme weather event. The report also confirms the tree is an environmental weed that may grow significantly larger. A copy of the report is attached and marked 'A'.

2. I am concerned about the safety of persons in my yard under the branches, and the risk of damage to my pergola. Photographs of the tree and pergola are attached and marked 'B'.

3. I am an aged pensioner living on my own. I do not have a large amount of savings to replace the pergola if it was damaged.

4. I have taken reasonable steps and expenses to resolve the matter informally including undertaking a title search to locate the name of the property owner, and issuing a Notice for Removal of Particular Overhanging Branches. This

PART G CHECKLIST AND SIGNATURE

- ☒ I have completed all questions on the application form according to the instructions
- ☒ I have provided the correct number of copies of the application form and attachments (for the number of copies required - see the instructions)
- ☒ I have paid the prescribed fee
- ☒ I am ready to proceed with this application.

Interpreter

Is an interpreter required? *The assistance of an interpreter is subject to approval by the tribunal.*

☐ Yes ☒ No

If Yes, please specify language: _____

Warning

Section 216 of the *Queensland Civil and Administrative Tribunal Act 2009* makes it an offence for a person to knowingly give the registry documents containing false or misleading information.

Maximum penalty for such an offence – \$10,000.

SIGN AND DATE HERE

The information in this application is true to the best of my knowledge.

M Heslop

Applicant/s sign here

1 August 2022

Date

If more than one applicant is named all must sign the application.

PRIVACY CONSENT AND DISCLOSURE STATEMENT

The Queensland Civil and Administrative Tribunal (QCAT) collects personal information from applicants in proceedings (You), for the purpose of compliance with the provisions of the Queensland Civil and *Administrative Tribunal Act 2009*,

Research purposes

QCAT wishes to use your personal information for research purposes to improve its services. An example of research is an online survey or focus group. QCAT may also share information about You with research companies for the purposes of conducting research. Any research company engaged by QCAT will undertake to keep your personal information confidential subject to the *Information Privacy Act 2009*.

By signing this Statement, you consent to communicate with QCAT by email or other suitable manner for research purposes; you consent to the sharing of your personal information with third parties as indicated and you waive your right to take further action against QCAT for any breach of your privacy.

Your consent commences from the date that you sign this Statement and return it to QCAT and continues for research purposes after your matter with QCAT has finalised and until you either withdraw your consent or upon the expiration of a period of 12 months.

Signature of applicant

By signing below, I acknowledge that I have read this Privacy Consent and Disclosure Statement and that I consent to the use and disclosure of my personal information as described in this Statement.

Applicant/s sign here

Contact details

For further information call 1300 753 228 or write to the QCAT registry, GPO Box 1639, Brisbane 4001.

For office use only	
Case number	
Date	
Registry	
Fee	
Date paid	
Receipt number	

This form can be completed and lodged online at:

qcat.qld.gov.au/resources/forms/our-online-services/start-an-application-for-a-minor-debt-dispute

Application for minor civil dispute – minor debt

Application fees apply – visit qcat.qld.gov.au/resources/fees-and-allowances for details

Part A

APPLICANT'S DETAILS *(full contact details must be supplied)* *(for multiple applicants attach details on a separate sheet)*

The applicant is the party who is making this application. If the applicant is not an individual then you must use the proper full company name, business name or the full name of the State agency or department. You must include all proper applicants.

Name

ACN/ABN *(if applicable)*

Postal Address

Suburb

State/Territory

Postcode

Contact details *(MUST be provided)*

Mobile

Alternative number

Email

Do you identify as Aboriginal or Torres Strait Islander?

No

Yes, Torres Strait Islander

Yes, Aboriginal

Yes, both Aboriginal and Torres Strait Islander

If you want someone to represent you in any proceedings before the Tribunal you must complete [Form 56 - Application for leave to be represented](#). You are not required to seek leave if you are a child or a person with impaired capacity. Visit the QCAT website for more information about [legal advice and representation](#).

Part A

APPLICANT'S DETAILS *(continued) (full contact details must be supplied)* *(for multiple applicants attach details on a separate sheet)*

Name

ACN/ABN *(if applicable)*

Postal Address

Suburb

State/Territory

Postcode

Contact details *(MUST be provided)*

Mobile

Alternative number

Email

Do you identify as Aboriginal or Torres Strait Islander?

No

Yes, Torres Strait Islander

Yes, Aboriginal

Yes, both Aboriginal and Torres Strait Islander

Part B

RESPONDENT'S DETAILS *(full contact details must be supplied)* *(for multiple respondents attach details on a separate sheet)*

The respondent is the party against whom the original application was made. If the respondent is not an individual then you must use the proper full company name, business name or the full name of the State agency or department. You must include all proper respondents.

Name

ACN/ABN *(if applicable)*

Postal Address

Suburb

State/Territory

Postcode

Contact details *(MUST be provided)*

Mobile

Alternative number

Email

Part B

RESPONDENT'S DETAILS *(continued)* *(full contact details must be supplied)* *(for multiple respondents attach details on a separate sheet)*

Name

ACN/ABN *(if applicable)*

Postal Address

Suburb

State/Territory

Postcode

Contact details *(MUST be provided)*

Mobile

Alternative number

Email

Part C

ORDER AND REASONS DETAILS

I am claiming the following amounts:

the amount owing \$
 date when the amount owing became due: / /
 Date Month Year

I also want to claim interest on the amount owing from the date when the debt became due to the date of the Tribunal's final decision. Choose from the rate which applies:

the rate I agreed with the respondent (attach agreement): % p.a.

OR

If there is no agreement with the respondent about the interest to be paid, the interest will be determined by the Tribunal. Refer to the interest calculator available at courts.qld.gov.au/courts-calculator/calculator

In either case:

I have calculated the amount of the interest up to the date of this application as \$
 Amount owing
 %
 Interest rate p.a.
 Dates to
 Period interest payable

Sub-total on which the filing fee is calculated: \$

I also want to claim these amounts:

the filing fee \$
 bailiff / sheriff / service fee (to serve the documents on your behalf) \$
[Australian Securities and Investment Commission](https://asic.gov.au/) (ASIC) business name \$
 extract or company extract search fee \$

The total amount of my claim is: \$

Why are you seeking payment of the total amounts?

You **MUST** provide as much detail as possible, including details of any written or verbal agreement. You **MUST** attach copies of all relevant documents, including but not limited to, any agreements, contracts, invoices, receipts and colour copies of photographs. If you do not provide this information your application may be dismissed. *If there is insufficient space please attach additional pages.*

Part D

ASSISTANCE AT THE TRIBUNAL HEARING

Will you require an interpreter at the hearing?

Yes - please specify language or Auslan:

No

Do you have any of the following needs?

wheelchair/mobility access

speech impairment

hearing impairment/loss

vision impairment/loss

other

If you have ticked any of these boxes, please provide details below.

CHECKLIST

I have completed all of the questions on this application.

I have provided the correct number of copies of the application form and attachments (*that is, a copy for each party, plus one for the Tribunal*).

I have attached copies all relevant documents, including but not limited to, any agreements, contracts, invoices, receipts and colour copies of photographs.

I am aware that the prescribed fee must be paid at time of lodgement.

I am ready to proceed with this application.

WARNING

Section 216 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) makes it an offence for a person to knowingly give the registry documents containing false or misleading information.

Maximum penalty for such an offence – 100 penalty units.

Sign and date here (if more than one applicant is named, then all must sign)

The information in this application is true to the best of my knowledge.

Applicant/s sign here *M. Heslop*

Date

Print your name/s here

Lodgement Details

Deliver to:

Queensland Civil and
Administrative Tribunal
Floor 11, 259 Queen Street
Brisbane Qld 4000
OR
your local Magistrates Court.
To find your local courthouse visit:
courts.qld.gov.au/contacts/courthouses

Mail to:

Queensland Civil and
Administrative Tribunal
GPO Box 1639
Brisbane Qld 4001
OR
your local Magistrates Court.
To find your local courthouse visit:
courts.qld.gov.au/contacts/courthouses

WARNING TO RESPONDENTS

You must respond to this application by completing and lodging [Form 7 – Response to minor civil dispute – minor debt](#) within twenty eight (28) days after you are given a copy of the application. Otherwise, the applicant may apply to the Tribunal for a decision by default against you.

INSTRUCTIONS FOR COMPLETING FORM 3

Application for minor civil dispute – minor debt

A minor debt is where another person, business or company owes you \$25,000 or less (excluding interest) and the amount is a fixed or an agreed sum of money.

A minor debt can be:

- a sum of money you lent to another person;
- an 'I owe you' or 'IOU' note;
- a cheque that was not cleared because the writer of the cheque did not have enough funds to cover it;
- the cost of work done under a written or verbal contract.

Do not use this form if:

- someone owes you more than \$25,000 (excluding interest);
- your application is not for a fixed amount;
- you are a consumer having problems with a trader about goods or services;
- you are in conflict with another trader about goods or services;
- you have a claim against a builder for losses associated with residential;
- building work;
- you have a dispute about a bond held by the Residential Tenancies Authority

Identify and naming parties

The applicant and respondent must be named correctly. If the party is not an individual then you must use the precise/exact company name, a business name (whether it is registered or not, including real estate agencies), or the name of a State agency or department. To ensure that you are taking action against the right organisation you **MUST** include the correct ABN/ACN for the company or business name. If you do not correctly name a party you may not be able to enforce any order made against them if you succeed in your claim.

Visit the QCAT website for information on [identifying and naming the parties](#) or contact the Australian Securities and Investment Commission (ASIC) for business name and company information. A search fee may be charged.

More than one applicant or respondent can be named in an application. If there is more than one, then everyone **MUST** be named. If there is not enough space to include additional parties, you can attach the contact details (name and address details) on a separate sheet of paper to the application.

Fees

You must pay the prescribed application fee when lodging your application. Visit the QCAT website for [application fees](#).

Cash payments can be made in person at the QCAT Brisbane registry or your local Magistrates Court.

Cheque or money order payments are to be made out to 'Department of Justice and Attorney-General'.

Credit card payments can be made by submitting a [Credit card payment authorisation form](#) with your application and can only be accepted by post or in person.

You may apply to QCAT for a waiver of the fee on the grounds of financial hardship. To apply, you **MUST** complete and lodge [Form 49 - Application for fee waiver or appeal fee reduction by reason of financial hardship](#). If you are eligible for a waiver you will not be required to pay the fee.

Lodging your application form

Before you lodge your application with QCAT you must make **two (2)** photocopies of the application and all attached supporting documents and lodge these together with your original application. An extra copy is required for each additional respondent. If you file your documents in person or by post, you must include a stamped self-addressed A4 envelope.

Giving copies to the respondent

You must give (serve) a copy of the application to the respondent/s no later than 90 days after you lodge the application. You can check the lodgement date by looking at the date stamp on your application form.

If you cannot serve the application on the respondent you must complete a [Form 42 – Application to extend or shorten time limit or wavier of compliance with procedural requirement](#).

You can serve the application personally, or by using the services of a Magistrates Court bailiff, commercial agent or process server. Visit the QCAT website for information [on serving applications and documents](#).

Once the respondent has been served, you must complete [Form 9 Affidavit of service](#). An affidavit is a statement sworn under oath/affirmation in the presence of a commissioner of declarations, justice of the peace or a lawyer. The affidavit is required to prove the application has been given to the respondent.

The respondent has 28 days from the date they were served to file a response to your application. To do so they need to complete and lodge [Form 7 — Response to minor civil dispute — minor debt](#).

Visit the QCAT website for [information on responding to an application](#).

What if the respondent doesn't respond?

If the respondent doesn't respond to your application within 28 days, you may be able to apply to QCAT for a 'default decision' to end the matter. A default decision is where the Tribunal makes an order without hearing the evidence from the respondent. To apply for a default decision you will need to lodge the following forms:

- [Form 6 - Request for decision by default - minor civil dispute - minor debt](#)
- [Form 9 - Affidavit of Service or Part B of the Form 6 - Request for decision by default - minor civil dispute](#).

Legal advice and representation

QCAT staff cannot provide legal advice. All parties involved in a matter before QCAT must usually represent themselves unless leave to be represented has been given.

Information about where to seek legal advice is available at [Where to seek legal advice](#).

Witnesses

If you have a witness whose evidence you rely upon to support your claim, that person should complete an affidavit setting out their evidence and attach it to your claim. Your witness may be required to answer questions at the hearing. If the witness cannot attend the hearing in person, they **MUST** be available by telephone.

Withdrawing an application

An application can be withdrawn if you no longer wish to proceed to have the dispute decided by the Tribunal. An application can be withdrawn at any time prior to the final hearing and determination of the application by lodging a [Form 58 – Application for leave to withdraw an application or referral / Notice of withdrawal of application or referral](#) online. Visit the QCAT website for more information on how to [withdraw an application](#).

Protecting your privacy

We collect your contact details to ensure QCAT proceedings comply with the *Queensland Civil and Administrative Tribunal Act 2009* (Qld). We may contact you to help evaluate QCAT operations. You do not have to participate in feedback or surveys. If you do participate, no identifying information will be published. We will not disclose your contact details or any other personal information to a third party unless required by law.

Contact us

For information about the application process or going to the Tribunal visit the [QCAT website](#).

Caxton Legal Centre Inc.

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1 Manning Street

South Brisbane Qld 4101

Telephone: (07) 3214 6333

Facsimile: (07) 3846 7483

Internet: www.caxton.org.au

Know Your Rights! www.queenslandlawhandbook.org.au

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