

QCAT Practice Direction No 5 of 2011

Arrangements for applications for orders to resolve other issues about trees

Effective 1 November 2011

1. This Practice Direction applies to all applications under Chapter 3 Part 5 of the *Neighbourhood Disputes Resolutions Act 2011* (NDR Act); that is, where:
 - a) A neighbour's land is affected by a tree; and
 - b) The neighbour can not resolve the issue using the process under Chapter 3 Part 4 of the NDR Act.
2. The following arrangements will apply where the Tribunal is satisfied on the basis of the application filed that the requirements of s 65 (a), (b) and (c)¹ of the NDR Act have been met:
 - a) Once the applicant has established that the application has been given² to the respondent tree-keeper and the "other relevant entities"³ referred to in s 63 (1) of the NDR Act, the Principal Registrar will issue the following directions:

¹ **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;
- (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.

² The applicant may establish that the application has been given to the respondent tree-keeper and the "other relevant entity" by filing an affidavit of service or a form of the acknowledgement of receipt of the documents from the respondent and each other relevant entity.

³ The other relevant entities are:

- (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.

- i) An appropriately qualified arborist is appointed as an assessor to carry out an inspection of the tree on a date to be notified by the registry and provide a report to the Tribunal on the issues raised in the application;
 - ii) The respondent tree-keeper must give to the assessor access to the tree-keeper's property to conduct the inspection on the date advised by the registry.
 - b) Following the inspection the assessor will provide to the Tribunal a report of the assessor's observations and recommendations.
 - c) Unless the Tribunal otherwise orders, the Tribunal will send to the parties:
 - i) A copy of the assessor's report;
 - ii) Consent orders that give effect to the assessor's recommendations; and
 - iii) A notice to the parties advising them of the following:
 - a. that if the parties agree with the assessor's recommendations, they should sign and date the consent orders and return them to the Tribunal within 21 days of the date of the notice;
 - b. that the parties may make written submissions to the Tribunal about the assessor's report;
 - c. that any such written submissions should be sent to the Tribunal within 21 days of the date of the notice;
 - d. that the Tribunal may make orders giving effect to the assessor's recommendations.
 - d) If the draft consent orders are not signed and returned by all parties within 21 days of the date of the notice, the matter will be listed for a directions hearing and directions will be made for the further conduct of the application.
- 3. The following arrangements will apply where the Tribunal is not satisfied on the basis of the application that the requirements of s 65 (a), (b) and (c) have been met:
 - a) Unless otherwise ordered by the Tribunal, once a response to the application is filed, the application will be listed for a compulsory conference;
 - b) If a response has not been filed within 21 days after the application is filed, the application will be listed for a directions hearing.

4. Assessor's report

- a) A report received by the Tribunal from an assessor appointed by the Tribunal will be received by the Tribunal as expert evidence;
- b) In any Tribunal proceeding held following the receipt of the report no party will be allowed to produce further expert evidence on the same issues covered by the assessor in the report without the leave of the Tribunal;
- c) If the Tribunal gives leaves to a party to produce expert evidence, the evidence must be in the form of a written report;
- d) Any expert who produces a written report will be required to attend an experts' conclave with the assessor and the relevant provisions of the QCAT Practice Direction no 4 of 2009 will apply.

*Justice Alan Wilson
President*

27 October 2011