

QCAT Practice Direction No 7 of 2013

Arrangements for applications for orders to resolve other issues about trees

Effective: 1 July 2013

Updated: 3 April 2014

1. This Practice Direction replaces Practice Direction 5 of 2011, which is repealed.
2. This Practice Direction applies to all applications under Chapter 3 Part 5 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (NDR Act); that is, where:
 - (a) A neighbour's land is affected by a tree; and
 - (b) The neighbour cannot resolve the issue using the process under Chapter 3 Part 4 of the NDR Act.
3. The following arrangements will apply where the Tribunal is satisfied on the basis of the application filed that the requirements of sections 65 (a), (b) and (c)¹ of the NDR Act have been met.
4. The timely and effective resolution of disputes about trees is assisted by the Tribunal and parties having access to independent expert evidence about the subject tree/s.
5. To ensure that expert evidence is available to the Tribunal and to avoid parties incurring excessive costs in engaging their own experts to report on the subject tree/s, to attend an experts' conclave and to give evidence in the proceedings the Tribunal will generally appoint an expert tree assessor (a qualified arborist) to help the Tribunal by providing

¹ **S 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.

expert evidence². The assessor will be asked to inspect the tree/s and the properties the subject of the application and provide a report which will outline solutions to the issues raised in the application.

6. The Tribunal may make an order requiring a party or all parties to pay all or part of the cost³ of the assessor up to a total of \$1,000.00. For example, if the Tribunal decides that both parties are to share the costs of the assessor equally the Tribunal will order that each party pays \$500.00 towards those costs.
7. The Tribunal's consideration of the parties' payment of the assessor's costs will start from the general proposition that the parties are to share equally the costs of the tree assessor (refer example in paragraph 6, above). In its absolute discretion, the Tribunal may make a different order, having regard to the contents of the application, any other submission or document filed in the proceedings and any other matter the Tribunal may consider relevant.
8. Once the Tribunal is satisfied that the application has been given⁴ to the respondent tree-keeper and the "other relevant entities"⁵ referred to in s 63 (1) of the NDR Act the Principal Registrar will issue the following directions:
 - (a) Each party is to file in the Tribunal and give to the other parties, within 14 days, any written submission they wish to make about the Tribunal's intention to appoint an assessor and the Tribunal's intention to make an order requiring the parties to contribute in equal shares to the cost of the assessor.
 - (b) The question of whether and if so how much each party will pay towards the costs of the assessor will be determined by a member of the Tribunal on the basis of the documents filed, without an oral hearing.

² See sections 110 and 11 of the *Queensland Civil and Administrative Act 2009* (QCAT Act).

³ See section 112 QCAT Act.

⁴ The applicant may establish that the application has been given to the respondent treekeeper 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.

⁵ 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.

9. The parties must make payment to the Tribunal for the assessor's costs in accordance with any order of the Tribunal and prior to the assessor being appointed.
10. When, and not until, the fee for the assessor has been paid:
 - (a) The Principal Registrar will issue the following directions:
 - (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) When an inspection is carried out 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) A proposed agreement that gives 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 agreement and return it to the Tribunal within 21 days of the date of the notice. The tribunal will then order that the application is dismissed;
 - 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) If the proposed agreement is 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.

11. 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 or directions hearing;
 - (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.
12. 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 leave 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. The parties will be required to pay the assessor's costs of attending the experts' conclave, in the proportion ordered by the Tribunal. These costs will be in addition to any costs already paid pursuant to an order of the Tribunal under paragraph 6 of this Practice Direction.
13. The payment of the assessor's costs may be adjusted, as between the parties, by any final order made by the Tribunal in the proceedings. For example, in making orders to finalise the proceedings the Tribunal may order that the respondent tree keeper is to pay to the applicant \$500.00 representing the Applicant's initial contribution to the assessor costs.



Justice David Thomas
President

3 April 2014