

CLAUSE NOTES

Neighbourhood Disputes About Plants Bill 2017

PART I – PRELIMINARY

Clause 1: Short title

Cites the Bill as the *Neighbourhood Disputes About Plants Bill 2017*.

Clause 2: Commencement

Provides for the Bill to commence on proclamation.

Clause 3: Interpretation

Provides a range of definitions for the Bill, including key definitions for 'affected land', 'Appeal Tribunal', 'government body', 'landholder', 'occupier', 'owner', 'party', 'relevant licence' and 'work'.

Clause 4: Meaning of plant and plant situated on land

Provides that a plant means any plant and any part of the plant, and for the purpose of clarification, includes:

- (a) a tree;
- (b) a hedge or group of plants;
- (c) fruits, seeds, leaves or flowers of a plant;
- (d) a trunk of a plant;
- (e) a stump of a plant;
- (f) any root of a plant; and a
- (g) dead plant.

A mechanism is included to exclude from the scope of the Act a member of a class of plants that are prescribed in Regulations, if this becomes necessary.

Provides that a plant is situated on land if the base of the trunk of the plant, or a place at which a stem of the plant connects with the roots of the plant, is or was situated in whole or in part on the land. This provides clarification around how the location of the offending plant will be determined under the Act.

Clause 5: Act does not apply to certain plants

Provides for certain categories of plants to be excluded from the operation of the Act. This includes plants that are situated on excluded land, and plants that are planted or maintained:

- (a) on a farm for a purpose that is necessary or desirable for the management or operation of the farm;
- (b) for the purpose of enabling the sale of the plant; or
- (c) under an order of a court or tribunal, but not if it is an order made for the purpose of this Act.

Live boundary fences that may be dealt with under section 48 of the *Boundary Fences Act 1908* are also excluded from the operation of the Act. Section 48 of the *Boundary Fences Act 1908* provides for notices to be issued to plant owners and for action to be taken in respect to live boundary fences.

Clause 6: Act binds Crown

Provides that the Act binds the Crown.

Clause 7: When land affected by plant

This clause provides that redress may be available when land is affected by a plant. This may apply if:

- (a) branches of the plant overhang the affected land; or
- (b) the plant has caused, is causing or is likely within the next 12 months to cause serious injury to a person, serious damage to the affected land or property, or substantial, ongoing, and unreasonable interference with the use and enjoyment by a person of the affected land.

It clarifies the meaning of substantial, ongoing and unreasonable interference in regards to sunlight and views.

An additional requirement is that the affected land must be situated within 25 metres from the base of the trunk or place at which the stem connects with the roots of the offending plant. This 25 metre restriction does not apply to obstructions to sunlight and views.

There is no requirement for the offending plant to be located on land which directly adjoins the affected land. This recognises that small strips of land, for example public footpaths, may sometimes separate parcels of land.

This clause also clarifies that excluded land cannot be affected by a plant.

Clause 8: Where plant situated on more than one area of land

Provides that where a plant is situated on more than one area of land, the owners are responsible for the portion of the plant that is situated on their land. However, there is a discretion for the Appeal Tribunal to make orders against both owners as if they were joint owners, or to either owner.

Clause 9: Meaning of excluded land

Provides for certain land to be excluded from the operation of the Act.

PART 2 – RIGHTS AND RESPONSIBILITIES IN RELATION TO PLANTS

Clause 10: Responsibilities in relation to plants

Outlines the responsibilities of land owners in respect to plants, including:

- severing and removing any branches of the plant that overhang another area of land;
- ensuring that a plant does not cause serious injury to a person or another area of land;
- ensuring that a plant does not cause serious damage to another area of land or any property on land; and
- ensuring that a plant does not cause substantial, ongoing and unreasonable interference with the use and enjoyment of another area of land.

It does not create a separate cause of action at law.

Clause 11: Joint liability of landholders for plants on their land

Provides that where there is more than one owner of land, each of the owners is jointly and severally liable for the plant and that any notices given under the Act may be given to any of the owners

Clause 12: Common law right of abatement

Preserves the common law right of abatement, except that a person who removes the part of the plant may, but is not required to, return the part of the plant to the plant owner.

Clause 13: Right to enter land

Provides that a person may enter land owned by another person if they are authorised under the Act and if certain conditions are met and appropriate notifications are made.

Entry must be made at a reasonable time and only to the extent that is necessary to carry out the work. The provision does not authorise entry to a dwelling.

Owners must take reasonable steps to ensure that it is safe for a person to enter the land to do the work.

Clause 14: Requirements under other laws not affected

The Act does not authorise work that would otherwise be unlawful, or limit the operation of another law which requires a consent or authorisation to be obtained before the work can be carried out.

Clause 15: Interpretation of Division 2

Clarifies the meaning of the words 'application' and 'order'.

Clause 16: Person selling land to give buyer copy of application or order, &c

Requires the seller of land to give a copy of any application and any additional information filed, or a copy of an order to a prospective purchaser before entering into a contract of sale for the land. If the seller fails to do this without a reasonable excuse, he or she commits an offence.

It is also an offence if the seller and owner of the land fails to notify the Appeal Tribunal as soon as practicable after a contract of sale is entered into, that the prospective purchaser is joined as a party to the application.

Clause 17: Consequences before transfer of failure to give copy of application or order to prospective purchaser

Provides that if a prospective purchaser of land is not given a copy of an application or order before entering into a contract of sale for the land, the prospective purchaser may terminate the contract of sale before settlement by giving a notice of termination to the owner or the owners agent.

If the contract of sale is terminated, the owner must refund the deposit to the prospective purchaser. It is an offence if the owner fails to do so.

If the person who holds the deposit fails to refund the deposit to the prospective purchaser after being directed by the owner to do so, the holder of the deposit commits an offence.

If a contract of sale is terminated by the prospective purchaser, the seller owner of the land and the person who was acting for the owner who prepared the contract of sale, if there is one, are jointly and severally liable to the prospective purchaser for reasonable legal and other expenses incurred by that person after that person signed the contract of sale.

Clause 18: Consequences after transfer of failure to give copy of order to prospective purchaser

An owner who sells land and who at the time of settlement has not carried out work that is required to be carried out by an order, is liable to carry out any outstanding work if the owner did not give the prospective purchaser a copy of the order before the parties entered into the contract of sale.

An owner of the land must not restrict the person from ensuring the work is carried out.

PART 3 – INFORMAL DISPUTE RESOLUTION

Clause 19: Neighbours to attempt to resolve dispute

The Act sets up a mechanism to encourage informal dispute resolution and provides that an affected land holder may request the owner of the plant to take action to ensure land is no longer affected by the plant either verbally or in writing (and on any number of occasions as is considered appropriate in the circumstances).

Both parties are required to make reasonable attempts to prevent the land being affected or to minimise the degree by which the land is affected.

Clause 20: Branch removal notice may be given

Provides for a branch removal notice process in relation to overhanging branches which are 2.5 metres or less above the ground and which extend at least 50 centimetres from the boundary. An affected landholder may issue the owner of the plant with a branch removal notice. The Act sets out discrete processes and rules around the provision of this notice.

Clause 21: Action that may be taken if branch removal notice not complied with

Provides that if an owner of plant does not remove branches as required by a branch removal notice, the affected landholder may sever and remove the branches but the affected landholder is not authorised to enter the land of the owner of the plant.

The owner of the plant is liable for the reasonable expenses incurred by the affected landholder in severing and removing the plant up to a prescribed maximum amount.

The affected landholder may recover the amount from the owner of the plant. The plant owner may apply to a magistrate to determine if the expenses that are sought to be recovered by the affected landholder are fair and reasonable, and the magistrate may determine another amount.

Clause 22: Notice about land affected by plant

Where a branch removal notice cannot be issued because the dispute relates to something other than overhanging branches or the overhanging branches are more than 2.5 metres high, the Act makes provision for a landholder of affected land to give notice in writing to an owner of the land. The notice may specify how the affected landholder believes that the land is affected and specify the action that the affected landholder believes the owner should take to remedy the situation. The notice may also request the owner to respond to the notice in writing.

PART 4 – APPLICATIONS TO APPEAL TRIBUNAL

Clause 23: Application to Appeal Tribunal

Provides that an affected landholder may apply to the Appeal Tribunal for an order and that the application is to be made in writing and sets out the requirements for the form and contents of an application.

Provides that an application is to be accompanied by a fee, if one is prescribed. If the Chairperson believes that paying the fee may cause financial hardship to a person, the Chairperson may waive, reduce or refund all or part of the fee.

Landholders who are not owners may make an application if certain conditions are met.

The Appeal Tribunal may also allow the amendment of an application.

Clause 24: Notice of application to be given

The applicant must give written notice of an application and other details to the owner of the land where the plant is situated, any interested government body that is entitled to appear and any other person who would be affected if the relief were granted.

The Tribunal may also notify a relevant party of an application if the Appeal Tribunal thinks fit.

Clause 25: Appeal Tribunal may require further information

Provides that the Appeal Tribunal may require further information or material if that information or material is required to determine the application, or may require a more formal application that identifies in more detail the grounds and the nature of relief sought and which complies with any other requirements imposed by the Appeal Tribunal.

The Appeal Tribunal may decline to proceed with the application until these requirements have been complied with.

Clause 26: Attempts to resolve dispute to be made before hearing of application

Before hearing an application, the Appeal Tribunal must consider if reasonable attempts have been made by the parties to resolve the matter. If the Appeal Tribunal is not satisfied that reasonable attempts have been made, it may direct the parties to attempt to resolve the matter.

The clause sets out the matters the Appeal Tribunal may take into account in determining whether reasonable attempts have been made and further matters the Appeal Tribunal may take into account before issuing a direction.

Clause 27: Interested government bodies may appear in proceedings

Government bodies may appear in proceedings if the proposed work may require the consent or authorisation of that government body.

Clause 28: Application of RMPAT Act

Clarifies how the provisions of the *Resource Management and Planning Appeal Tribunal Act 1993* will apply for the purposes of the Act.

Clause 29: Parties to applications

Provides that a person who has an interest in an application may apply and be made a party to proceedings by the Appeal Tribunal.

Provides that a prospective purchaser of land who is given a copy of an application, is joined as party to proceedings when the person enters into a contract of sale.

Clause 30: Matters generally to be considered by Appeal Tribunal

Sets out the matters the Appeal Tribunal must, to the extent that they are relevant, have regard to in considering an application.

These include the provisions of the relevant planning scheme under the *Land Use Planning and Approvals Act 1993*, the plant's location, any risks associated with soil instability or changes to the water table, whether the plant or any risk, obstruction or interference previously existed, certain matters relating to sunlight and views, whether the work would require any consent or other authorisation under another Act, the type of plant, the contribution the plant makes to the amenity of the land, any risk associated with the plant due to weather and the likely effect of pruning the plant.

In respect to sunlight, the Appeal Tribunal is also required to consider the amount of sunlight obstructed by the plant, the number of hours per day during which the sunlight is obstructed, the period of year during which sunlight is obstructed, and whether the plant loses its leaves at certain times of the year and the proportion of the year during which leaves are lost.

In respect to views, the Appeal Tribunal is also required to consider the nature and extent of the view that is obscured, and the uses to which the part of the dwelling is put.

Clause 31: Matters to be considered if threat of serious injury or serious damage

Provides that the Appeal Tribunal may consider certain additional matters where there are allegations that a plant has caused, is causing or is likely to cause serious injury to a person or serious damage to land or property.

The clause also sets out certain matters the Appeal Tribunal may consider in making an order for the destruction of a plant.

Clause 32: Matters to be considered if unreasonable interference

Provides that the Appeal Tribunal may consider certain additional matters where there are allegations that a plant has caused, is causing or is likely to cause substantial, ongoing and unreasonable interference with the applicant's use and enjoyment of the affected land.

Clause 33: Appeal Tribunal to determine application

Provides that the Appeal Tribunal must decide an application by dismissing it or making one or more orders in relation to it.

This clause also sets out a range of orders that the Appeal Tribunal may make in relation to the application.

This includes an order that an application is to be deferred until an application for a permit or an appeal is determined under the *Land Use Planning and Approvals Act 1993* or to amend a permit that is issued under that Act

Provides that despite the provisions of section 61(5) of the *Land Use Planning and Approvals Act 1993*, the owner of land on which the plant is situated may appeal against a decision relating to a permit issued under the *Land Use Planning and Approvals Act 1993* that relates to the plant.

It also provides that the Appeal Tribunal may make an interim order in relation to a plant if it is satisfied that a plant is causing an immediate risk of injury to a person or property.

An order is not to be made that requires the removal or destruction of a living plant, unless the Appeal Tribunal is satisfied the purpose of the application cannot be achieved in another way.

Clause 34: Effect of orders

Orders are binding on a person who was a party to proceedings.

A purchaser of land who was given a copy of an order by the seller owner before entering a contract of sale, is also bound by the order from the time of settlement, but only to the extent that the previous owner did not carry out the work required by the order.

The Appeal Tribunal is required to give a copy of an order within 14 days after the making of the order, to the relevant council, if any, and any other government body or party who appeared in the proceedings.

Clause 35: Duration of order

Orders lapse after 10 years from their making unless the order states otherwise.

Clause 36: Variation or revocation of order

Provides that a landholder or plant owner, may apply to the Appeal Tribunal for a variation of an order. An application is to be accompanied by a prescribed fee, if any.

On receiving an application, the Appeal Tribunal may alter the terms of the order or substitute an order. The Appeal Tribunal is to give written notice of a variation or revocation to the affected landholder, the plant owner, the council (if any) and any government body or other person who the Appeal Tribunal thinks may have an interest in the matter.

A variation of an order only takes effect when the affected landholder and plant owner have been given written notice of the variation. The Appeal Tribunal may also revoke an order on application or on its own initiative.

Clause 37: Database of orders to be kept

The Appeal Tribunal is to establish and maintain a database of orders and applications in any form that it thinks fit.

The database is to detail whether an application or order has been made in relation to an area of land, the details specified in the application and if an order has been made, the terms of the order, when the order takes effect, when action is required to be carried out and who is required to carry out the action.

The database is to contain the information within 14 days of an order being made, or within 14 days of a variation or revocation being made to an order.

On payment of the prescribed fee, if any, a person may search the database and obtain a certified copy of any information contained in the database that relates to an order or application.

PART 5 – MISCELLANEOUS

Clause 38: Regulations

Provides that the Governor may make regulations for the purposes of the Act. Other standard provisions relating to regulations are also included.

Clause 39: Review of Act

Provides that the Minister is to cause an independent review of the operation of the Act as soon as practicable after the fourth anniversary that this section commences.

The reviewers are to give the Minister a written report, and the Minister is to cause a copy of the report to be tabled in each House of Parliament within 10 sitting days of each house, after it is given to the Minister.

The reviewers must, in the opinion of the Minister, be appropriately qualified and include one or more people who are not State Service employees or officers.

Clause 40: Administration of Act

Provides that until other administrative arrangements are made under the *Administrative Arrangements Act 1990*, administration of the Act is assigned to the Minister for Justice and the Department of Justice.

PART 6 – BOUNDARY FENCES ACT 1908 AMENDED

Clause 41: Principal Act

The Principal Act that is amended is the *Boundary Fences Act 1908*.

Clause 42: Section 48 amended (Notice to cut live fences and to clear adjoining land)

Amends section 48 of the *Boundary Fences Act 1908* to clarify that action may be taken under that section where a live boundary fence is more than 1.8 metres in height.

PART 7 – LOCAL GOVERNMENT (GENERAL) REGULATIONS 2015 AMENDED

Clause 43: Principal Regulations

The Principal Regulations that are amended are the *Local Government (General) Regulations 2015*.

Clause 44: Schedule 6 amended (Questions)

Amends the *Local Government (General) Regulations 2015* by inserting a new question on information certificates provided by councils under section 337 of the *Local Government Act* to prospective purchasers of land.

The new question asks if the council has a record of an order that has been issued by the Appeal Tribunal under this Act in relation to the specified land.