

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Neighbourhood Disputes About Plants Amendment Bill 2019

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Madam Speaker, I move that the Bill now be read a second time.

On 1 December 2017, the *Neighbourhood Disputes about Plants Act 2017* commenced operation. This important initiative of our former Attorney General, Dr Vanessa Goodwin, addressed a gap in legislation that existed at the time, specifically the lack of redress that was available for disputes about plants that relate to sunlight and views.

It also provided for other neighbourhood disputes relating to plants to be dealt with under the same cost effective, efficient and accessible statutory scheme.

Since the Act commenced operation and 7 August 2019, 18 applications had been filed with the Tribunal as at 1 August 2019. Of those, a significant proportion, 11 applications, have been withdrawn prior to hearing and no formal orders have been sought from the Tribunal. In many cases parties have engaged in negotiations between themselves or as a result of formal mediation processes, with action having been taken to resolve the matters in dispute.

I am pleased to say that this suggests that the mechanism in the Act which encourages neighbours to attempt informal dispute resolution and mediation, before going down the path of formal dispute resolution, is working as intended.

Since the Act commenced operation, it has become apparent that the Act could be improved by making some minor technical and operational amendments to the Act. The Bill makes these minor amendments.

While the Act contains provisions which enable the Resource Management and Planning Appeal Tribunal to make orders in respect of disputes, and it is also an offence under the contempt

provisions of section 33 of the *Resource Management and Planning Appeal Tribunal Act 1993* for a person to fail to comply with an order of the Tribunal, the Act does not have specific enforcement provisions for orders made under the Act.

To address this deficiency, the Bill inserts specific provisions to allow the Tribunal to make an order, if it is satisfied that the original order has not been complied with in the time specified in the order. This fresh order will allow the affected landholder, or their employee, agent or contractor to carry out the work and to recover as a debt from the defaulting party, the reasonable expenses incurred in carrying out the work and the costs of the application.

The Bill also make provision for the affected landholder to make the relevant application, and for the Tribunal chairperson to waive, reduce or refund all or part of the application fee, if the chairperson is satisfied that paying it may cause financial hardship to that person.

In order to ensure that there is no incentive for defaulting parties to disregard an order made by the Tribunal, the Bill also inserts a specific offence and penalty provision for failing to comply with an order of the Tribunal.

These new enforcement provisions are similar to the enforcement provisions recommended in the Queensland Law Reform Commission's review of the Queensland *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*. The Tasmanian Act is largely modelled on those laws.

The Bill also clarifies that the current requirement to provide at least 7 days notice of the intention to enter land to perform work under the Act, does not apply to a notice given under the branch removal notice provisions or where an interim order is made by the Tribunal.

This change is necessary because the branch removal notice provisions already require the person who intends to perform work on another person's property to provide at least 24 hours notice to another person, and it is unclear whether the person is required to provide 7 days notice or 24 hours notice to the other person.

The Bill also clarifies that the requirement to provide at least 7 days notice of the intention to enter land to perform work, does not apply in circumstances where the Tribunal makes an interim

order. This exception is necessary as interim orders can only be made in situations where there is immediate risk of injury to persons or property.

The Bill also provides that the Tribunal may take into account any other matter that the Tribunal considers relevant, when it is determining whether parties have made reasonable attempts to resolve disputes.

It should be noted that currently under the Act, the Tribunal is required to be satisfied that reasonable attempts to resolve the matter have been made by the parties before it may hear a matter, but in deciding this the Tribunal may only take into account certain matters. This amendment is desirable, because it will give the Tribunal more flexibility in deciding what matters are relevant when determining whether parties have made reasonable attempts to resolve a dispute.

The Act requires an independent review of the operation of the Act to be carried out as soon as practicable after 1 December 2021. The independent review will ensure that all relevant issues, including the threshold test for redress, are more fully considered following consultation with a broad range of stakeholders.

This Bill simply makes discrete amendments to improve the operation of the Act which can be addressed quickly and prior to this fourth anniversary review being undertaken.

Madam Speaker, I commend the Bill to the House.