

Problems with neighbours

There are laws to protect people from the actions of neighbours, for example, in respect of fencing, trees, noise, trespass and privacy. As our cities become more crowded, and cheek-to-jowl living becomes more common the number of neighbour disputes will inevitably rise. Taking action before the courts under 'neighbour' laws is, however, usually regarded as being at the extreme end of neighbour disputes.

A more satisfactory approach is for the neighbours to discuss a matter in dispute and negotiate an amicable solution to the problem; generally it is in the interests of both parties to be on reasonable terms. There is often little to be gained from poisoning a relationship with someone who may live alongside you for many years. Although it may be prudent before approaching a neighbour about a problem to obtain legal advice about your rights and possible remedies.

What should be my first step when I have a problem with my neighbour?

In general, you should attempt to resolve any dispute with a neighbour by talking and trying to reach a solution satisfactory to each of you. After all, you may be living alongside one another for years to come and it is in both your interests to be on reasonable terms.

Taking disputes with neighbours to court can be expensive for both you and your neighbour and the outcome may leave the parties bitterly antagonistic to each other. In your own interests, do not take any action over a problem before talking the matter over with your neighbour, or, if necessary obtaining legal advice about your rights and possible remedies.

As an alternative to going to court you can take a dispute to a [Community Justice Center](#) (for phone numbers and addresses, see the New South Wales Government section in the phone book). At these Centers, trained mediators help people in dispute to come to a settlement. Mediators do not decide who is right or wrong, nor do they have the power to award costs or impose penalties. Community Justice Centers may advise you to see a Solicitor before mediating so that you are aware of your legal rights before negotiating a settlement to a dispute.

Do I have to have a dividing fence?

There is no requirement to have a fence if you and your neighbour don't want one. However, if, for instance, you want a fence and your neighbour doesn't, you should get a quote for one to be built and discuss it with the neighbour.

If you don't reach agreement, you can give the neighbour a written notice specifying the fencing work proposed. If after serving the notice you and your neighbour still cannot agree, either of you may ask the [Local Court](#) or land board to make an order about the fencing work required. If a fence is to be built, you and your neighbour usually, though not always, will have to share the cost.

Who pays for repairs to a fence?

Usually, you and your neighbour will *share equally the cost* of repairs to any fence between your properties. However, if the fence was damaged because either of you was careless (for instance, by a fire or by trees or structures in poor condition) then the responsible party must pay for repairs. If he or she does not, the other neighbour can do so and may proceed against the responsible party to recover the cost.

What can I do about overhanging branches?

Cutting back the branches and roots of your neighbour's tree that protrude on to your property would most usually require the consent of your local council under its Tree Preservation Order. Orders generally cover trees above three meters in height and may include large bushes. It would be wise to check with your council before proceeding with any cutting back. Remember, if there is such an Order and you breach it, you could be prosecuted and fined. Having cut branches or roots, strictly speaking they should be returned to their owner, your neighbour.

If a neighbour's tree causes damage on your property, for instance by its roots lifting a driveway or a dead branch falling and knocking tiles off your roof, you may be able to sue for compensation.

Can my neighbour come on to my land?

Only under certain circumstances, for instance if the neighbour has a right of way. Usually, any right of way will be described on your and your neighbour's land title documents and cannot be ended or varied except by both of you agreeing to do so.

You can allow any person to come on to your land for a particular purpose and can withdraw the permission at any time. Once you have withdrawn permission, the person must leave immediately; if the person does not, he or she becomes a trespasser.

Your neighbour has no right to come on to your land without your permission to retrieve something that has crossed the boundary, for instance a tree branch, a ball or an animal. Anyone who comes on to your land without your permission is a trespasser and you can sue a trespasser for any damage caused.

My neighbour's dog comes into my garden is that allowed?

Not without your permission. If you don't give permission, or you give permission and later withdraw it, a dog on your land may be considered a trespasser and you are entitled to take the dog to the local council. However, if no damage has been done, it is probably best to return the animal to your neighbour or ask the neighbour to retrieve it.

If the animal has caused damage, you can request the neighbour to compensate you. Trespass by other animals, including cattle, horses, sheep and goats, may be dealt with in the same way as that by dogs. See Fast Answer "Neighbours - Problems with animals?"

How can I stop my neighbour's noise?

The first thing to do is ask your neighbour to stop or reduce the noise or to make it only at certain times of day. If this approach fails, depending on the cause of the noise there are various steps you can take. For example, if you are being disturbed by a party late at night, you may complain to the police who can give a noise abatement direction to the noisemakers.

There are regulations that restrict the use of certain noisy items, such as lawn mowers, power tools and air conditioners, to certain times on certain days. You should approach the [Environmental Protection Authority](#) or your local council if you are troubled by noise from such items.

Can I stop my neighbour burning-off?

Burning off any material is prohibited under the [Clean Air Act](#), except for cooking, recreational, agricultural and fire fighting purposes. There are also exceptions for certain local council areas in which garbage is not collected regularly. If your neighbour is burning off, you may report this to your local council. If the burning off is illegal, the council may choose to have the matter prosecuted in a local court.

My neighbour peers over the fence do I have a right to privacy?

Legally there is no right to privacy and nothing you can do about a neighbour who looks into your property or listens to what is going on there. Apart from asking the neighbour not to look into your house, you could take action such as building a higher fence, planting screening trees or shrubs, or hanging heavier curtains.

How can a Solicitor help me?

Your Solicitor can:

- Advise you of your rights in a dispute with neighbours. Once the legal questions are answered, you and your neighbour may be able to see your problem in a different light;
- Advise you of the courses of action available to you in a particular dispute;
- Assist you with writing letters or completing forms that may be required when approaching government agencies.

These brief notes are for your general information. They are not a definitive analysis of the subject and professional legal advice should be taken before any course of action is pursued. Your Solicitors at Barry F. Cosier & Associates can advise you further regarding any matters of this nature.



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