



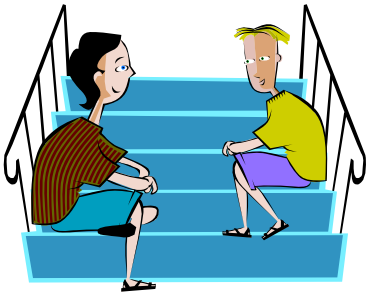
HEIDTMAN & CO.

LAWYERS

PROBLEMS WITH YOUR NEIGHBOURS

What Should I Do If I Have A Problem With A 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, 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 Centre (for telephone numbers and addresses, see the New South Wales Government section in the phone book). Trained mediators at these Centres can help people in dispute 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 Centres may

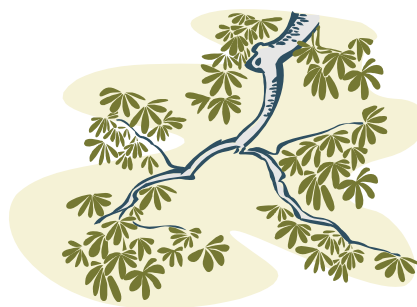
advise you to see a Solicitor before mediating so that you are aware of your legal rights before negotiating a settlement to a dispute.

Do I Have To Have A Dividing Fence?

There is no requirement to have a fence if you and your neighbour do not want one. However if, for instance, you want a fence and your neighbour does not, you should get a quote for one to be built and discuss it with your neighbour.

If you cannot reach agreement, you can give your 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.

What Can I Do About Overhanging Branches?



Cutting back the branches and roots of your neighbour's tree that protrude onto your property may require the

consent of your local Council under its tree preservation order. It would be wise to check with your Council before proceeding with any cutting back. If there is such an Order and you breach it, you could be prosecuted and fined. Strictly speaking, once cut, branches or roots 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 entitled to compensation from your neighbour.



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 may have to pay for the repairs. If he or she does not, the other neighbour can do so and may proceed against the responsible party to recover the cost.

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Can My Neighbour Come Onto My Land?

Only under certain circumstances, for instance if they have a right of way. Usually, any right of way will be described on your and your neighbour's land title documents and cannot be terminated or varied except by both of you agreeing to do so. You can allow any person to come onto your land for a particular purpose and can withdraw the permission at any time. Once you have withdrawn permission, the person must leave immediately; and if they do not, they become a trespasser.

New Changes To The Law

In 2000, legislation was introduced permitting landowners and tenants access to neighbouring land to carry out work on their own land or to work on utility services such as sewerage, gas or electricity on their neighbour's land

Under the new system, an owner or tenant can request access to neighbouring property and the parties have to try to reach an agreement. If they cannot agree on access, the person requesting it may apply to the Local Court for a "neighbouring land access order" or a "utility service access order".

An access order must specify the date when access is no longer permitted. Access orders (or applications for them) will have to be disclosed when the land is being sold.

Tradespeople may apply for a land access order with the consent of the person requesting a "neighbouring land access order". In the case of a "utility service access order", however, the party applying for the order must be entitled to the use of a utility service. This would include utility service providers. The legislation applies to repairs and

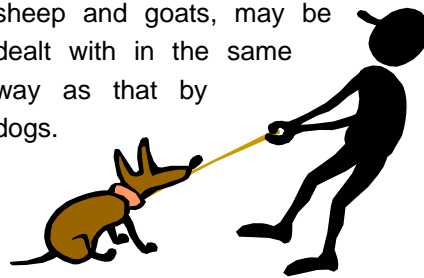
maintenance as well as to orders for the "construction" of a "proposed utility service".

When the Local Court grants an access order it can specify conditions such as the need to minimise loss, damage, injury, inconvenience or loss of privacy; as well as requiring insurance and the reimbursement of expenses.

My Neighbour's Dog Comes Into My Garden. Is That Allowed?

Not without your permission. If you do not give permission, or you withdraw permission previously given, 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 simply 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.



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 noise makers.

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 State Pollution Control Commission 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 or 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?

If you have a dispute with your neighbour, we can advise you of your rights, advise on various courses of action available to you in a particular dispute and assist you with writing letters or completing forms that may be required when approaching government agencies.

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