

Overhanging Trees & Dividing Fences

OVERHANGING TREES

The *Neighbourhood Disputes Resolution Act 2011* commenced on 1 November 2011. The provisions of the Act allow residents to resolve neighbourhood disputes more easily. It also encourages residents to be good neighbours and resolve their disputes concerning trees and fences in a friendly and timely manner.

Talk to your neighbours. In neighbourhood disputes the best approach is always try to reach an amicable agreement. Generally, liaising with your neighbour is better than using a third party, however an objective mediator can assist neighbours to reach a mutual agreed solution. Mediators are available through the Dispute Resolution Centre or the Citizens Advice Bureau. Legal Action should be a last resort as it can be costly and tends to worsen neighbour relations.

Resolving disputes

Every year, thousands of Queenslanders find themselves in the middle of a neighbourhood dispute about a tree or a fence. The Act outlines the rights and responsibilities of all parties involved.

Under the Act the proper care and maintenance of a tree will be the responsibility of the tree keeper. The Act provides greater choices for neighbours about trees affecting their property.

The new laws set clear rules about dividing fences in urban areas. The Act includes a wider definition of the term fence (including hedges) and a clearer definition of the term 'sufficient dividing fence'.

The Queensland Civil and Administrative Tribunal (QCAT) has jurisdiction to hear and decide any matter in relation to a tree in which it is alleged that the land is affected by the tree.

QCAT provides a single tribunal through which the community can access justice. QCAT provides the community with a more accessible, informal and responsive means of resolving neighbourhood disputes.

Non-Council Matters

The following matters come under the provisions of the Neighbourhood Disputes Resolution Act 2011 and are not the responsibility of Council.

- overhanging branches / dividing fences
- substantial, ongoing and unreasonable interference with the use and enjoyment of the neighbours land. Example: severe obstruction of sunlight to a window or roof (e.g. interfere with solar panels or television reception), severe obstruction of a view, etc.

Contacts

For more information on the responsibilities of tree-keepers, including dealing with overhanging branches and a step-by-step guide to dealing with neighbourhood disputes, contact the **Department of Justice** on 07 3239 3520, www.neighbourhooddisputes.qld.gov.au **QCAT** 1300 753 228 www.qcat.qld.gov.au or seek private legal advice.



DIVIDING FENCES

(Please note that this advice was provided by the Department of Justice and Attorney General – Queensland Civil and Administrative Tribunal.)

Who owns a fence?

If it is built on the common boundary line, a dividing fence is owned equally by the adjoining neighbours. However, a fence, or part of a fence, built on one neighbour's land is owned by that neighbour, even if the other neighbour helped pay for the fence. You should be careful to build your fence on the boundary if you are paying half the cost.

Who can help resolve a fence dispute?

Whenever possible, you should solve any dispute directly with your neighbour. Tips for resolving fence disputes available at <http://www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings/resolving-tree-and-fence-disputes> can help. It is always better to reach an agreement with your neighbour and avoid any possibility of a legal dispute.

Basic rules for dividing fences

1. There should be a 'sufficient' dividing fence between properties if an adjoining owner requests one—even if one or both pieces of land are empty.
2. Usually neighbours must contribute equally to the cost of building and maintaining a dividing fence.
3. You should not attach anything to a dividing fence that could damage it.
4. In most cases, issues about dividing fences need to be solved by the owners of the properties. If you are a tenant, unless you have a long-term lease on the land, you should refer queries over a dividing fence to the property owner or agent.

When you build a fence, who pays?

If you are going to build a fence between your and your neighbour's property, you should give your neighbour a letter telling them about the fence, how it will be built and the estimated cost—including their contribution. This is called a notice to fence. You must get at least one quote, but as a matter of courtesy you should supply 2. If your neighbour thinks the quotes are too high, they can obtain their own quote. Each neighbour is liable for half the cost of fencing work. However, where one neighbour wants more work done than is necessary for a 'sufficient dividing fence' they pay the extra cost. For example, if your neighbour needs a higher fence to keep their dog from getting out, they should pay the extra cost or provide extra materials and labour to build the fence to the height they need it above what is 'sufficient' for your needs.

Get legal advice

If you can't solve the dispute with your neighbour, you may need legal advice. The Queensland Law Society (www.qls.com.au/) can refer you to a private lawyer.

Legal Aid Queensland

(<http://www.legalaid.qld.gov.au/>) does not provide legal advice about fence disputes, but can give you the contact details of your local community legal centre, including **Queensland Association of Independent Legal Services (QAILS)** (<http://www.qails.org.au/>).

Queensland Law Society	07 3392 0092
QAILS	07 3392 0092



Customer Service Centres

Beaudesert Administration Centre, 82 Brisbane St

Boonah Customer Service Centre, 70 High St

Tamborine Mountain Customer Service Centre, Cnr Main Street and Yuulong Rd

Telephone 07 5540 5111 www.scenicrim.qld.gov.au mail@scenicrim.qld.gov.au