



THE LAW SOCIETY  
OF NEW SOUTH WALES

KNOW YOUR  
RIGHTS

# PROBLEMS WITH NEIGHBOURS

## Can you stop your neighbour's noise?

Noise is probably the most common source of contention between neighbours. If you're being disturbed usually the best thing to do is to ask your neighbour to reduce their noise or to avoid making noise at certain times of the day. If that doesn't work, the next steps you should take depend on the circumstances.

If you're being disturbed by a party late at night you can call the police, who have the power to ask your neighbours to stop.

Your local council and the Environmental Protection Agency both have rules about when people can make noise, especially when it comes to power tools, building work and operating machinery. You can read more about these rules and the procedure for enforcing them on your local council's website and at <http://www.epa.nsw.gov.au/noise/>.

If your neighbour keeps making noise even after you've asked them to stop, you may also be able to bring proceedings in a Local Court. Another alternative may be to take your dispute to a Community Justice Centre, where a mediator will help you resolve your dispute less formally.

Your solicitor can advise you on the best way to resolve your dispute.

## What can you do about overhanging branches?

You should never take it upon yourself to cut branches that hang over your property, without first speaking to your local council or solicitor. That's because councils usually have Tree Preservation Orders in place.

What's covered by these varies from council to council and sometimes they will allow you to lop a portion of the tree, but not the whole tree. You can be fined if you breach a Tree Preservation Order.

You can usually sue for damages if your neighbour's tree has damaged your property – for instance, if a tree's roots have lifted your driveway or a branch has fallen onto your roof and damaged tiles. A court can also make an order preventing a tree from damaging your property in the future.

## Can your neighbour or their pets come onto your land?

A neighbour can generally only enter your land if you've told them they can or if they have a right of way or other right of access to your land (called an easement). Usually, a right of way or easement will be shown in your land title documents.

People don't have any right to enter your land to retrieve something, unless you've told them they can. However, if they have entered your land previously and you haven't complained, a court may consider that you've given your permission. Similarly, their pets can't come onto your property either. If, for instance, a neighbour's dog comes onto your land, you have the right to call the dog catcher.

If you've previously told a neighbour they can enter your land (or didn't object when they previously entered), you can withdraw your permission whenever you like.

Once you do, they have to leave immediately, otherwise they're trespassing.

If someone trespasses on your land, or if their pet does, you have the right to sue them for any damage. That said, sometimes your neighbour can ask for a court order that lets them or their tradespeople enter your land for a limited time so that they can carry out a specific task, such as mending a fence or painting their house if it's close to the boundary.

## Do you need to have a dividing fence?

You don't need a dividing fence if neither you, nor your neighbour, want one. If one of you would like a fence and the other wouldn't it's usually best to get a quote for a fence to be built and then to sort it out amicably.

Where you don't agree, your local court or the NSW Civil and Administrative Tribunal has the power to make an order about whether a fence should be erected. However, because of the cost and stress involved it's often better to try mediation before you go to court. Where a fence needs to be built, it's generally up to neighbours to split the cost.

A dividing fence doesn't have to be the best money can buy, it only needs to be 'sufficient'. If your neighbour wants more than this, they'll usually need to pay the difference themselves.



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## Who should pay for fence repairs?

The general rule is that any repairs to a fence should be split 50/50. However, where the fence has been damaged because one of you was careless or reckless, then the person responsible for the damage usually incurs the cost of repairing it.

If you can't agree, then a court or land board can make an order about who should pay.

## Can your neighbour look over your fence?

In NSW, there's no legal right to privacy. So if a neighbour can see into your backyard, they're allowed to look at or listen to what's going on. Besides asking your neighbour to stop, one thing you may be able to do is to try to block their view by building a higher fence or planting shrubs or trees around the perimeter of your land. (But keep in mind that, if a hedge or plant is bigger than you need and blocks your neighbour's sunlight or view, a court can order you to remove it.)

If they're looking inside your place, you might also want to invest in heavier curtains.

If your neighbour's behaviour starts to border on harassment or intimidation, you should contact the police and try to obtain a personal protection order.

## Is your neighbour allowed to burn off?

These days people are usually only allowed to burn off if they're cooking or if they're doing it for agricultural, recreational or firefighting purposes. That said, some local councils allow burning off if there's no regular garbage collection.

If your neighbour is burning off without permission, you can report it to your local council or to the fire brigade. If the burning off is illegal or there's a fire prevention order in place, the council may choose to prosecute your neighbour.

## Finding a practical solution to neighbourhood problems

When you have a dispute with your neighbour the last thing you should usually do is rush straight for the courts. Instead, the most effective way of working out a solution is usually to talk and try to come to an arrangement that suits you both. After all, you could be living near each other for a long time to come, so it's probably in both your interests to stay on reasonable terms.

If the problem persists, you should always speak to your lawyer about your rights as well as any potential ways of solving the dispute. For instance, instead of going through the court system your solicitor may recommend that you go through mediation, as a way of reaching a workable agreement while keeping costs down.

That's because a mediator won't make a strict ruling about who's right or wrong, or impose any penalties. They'll simply try to settle the dispute by having you agree to a solution you both can live with.

You can find out more about mediation from your solicitor.

## How can your solicitor help?

Neighbourhood disputes are common. Your solicitor can advise you on how to make sure your dispute is resolved in the best possible way. They can:

- Advise you on your rights, answer any legal questions you have, and help you negotiate an outcome that suits you
- Advise you about the right way to resolve a dispute and what courses of action are available
- Write letters of complaint for you, or help you complete the forms you'll need to submit to a government agency.

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