

# Overhanging Branches and Roots - A Fact Sheet

## **My neighbour's tree has branches that are overhanging and roots that are encroaching onto my property. What can I do to try to resolve the problem?**

It's important to try to maintain good relationships with your neighbours, so it's always best to first talk to them about any problems you might have with the trees they're growing. You can even write a letter setting out the problem and how you'd like to resolve it. You can also consult your local council and see if they can intervene.

## **How can my local council help me with problems about overhanging branches or encroaching roots?**

The Local Government Act gives councils power to take action against property owners in the area whose trees are unsafe to nearby people or property. To get local council intervention, you need an arborist to provide a written report saying the tree is structurally unsound or potentially dangerous. If your local council finds from the report that the tree endangers neighbouring people or property and needs to be made safe, they can issue your neighbour with a notice to fix the problem.

It's advisable to contact your council before taking any action, as each council has their own sets of procedures to be followed before they become involved. It's also a good idea to talk to a lawyer.

## **Can I cut branches or roots that are encroaching onto my property?**

You're legally entitled to cut and remove any tree branches or roots that encroach over the boundary of your neighbour's land and into your land, up to the point of where your property ends. If you cut anything on your neighbour's property, you are liable for that as property damage.

By law, you don't have to give notice to your neighbour before taking this action.

However, it's advisable to talk to them and let them know what you're intending to do anyway. Your local council may also have tree preservation laws in place for certain kinds of trees and you should check with them before doing anything.

## **What should I do with any cuttings I make?**

The owner of the tree that any cuttings come from is considered the owner of those cuttings. This means that any parts of your neighbour's tree you remove need to be returned to them. You should return the cuttings in a way that doesn't damage the neighbour's property or cause litter, otherwise you are liable for that.

## **My neighbour's tree branches or roots are causing damage to my property. What can I do?**

If overhanging branches or encroaching roots have damaged your property, you should write a letter to your neighbour that sets out:

- The specific damage their tree's branches or roots have caused to your property;
- Several quotes for the cost of repairing the damage;
- A request for your neighbour to pay for those costs and how they'll do that; and
- A request that they fix the problem, removing parts of the tree if needed.

You should send your neighbour a copy of the letter and keep a copy yourself. Your neighbour has a legal obligation to respond to the letter within 21 days and fix the problem.

## **My neighbour and I can't reach an agreement. What can I do next?**

If talking to your neighbour or writing them a letter doesn't work, mediation is a good option. CAB offers a low-cost Community Mediation service where the parties can sit down together and, guided by a trained mediator, negotiate a practical and fair solution to their problem.



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It's an alternative way of resolving your issue while still maintaining a good relationship with your neighbour.

If mediation doesn't work, you can start legal proceedings by going to the Magistrates Court website and making an online application. Refer to our fact sheet on eLodgment of court documents.

## **I don't know my neighbour's name. How can I find this out?**

Before you can make a neighbour dispute appointment with CAB, we'll need to know your neighbour's full name.

If you don't know their name, there are a few ways you can find it:

- If the property is rented or leased, ask the tenant, real estate agent, or property manager;
- Do a land title search through Landgate (note that this incurs a fee); or
- Contact your local council or shire – subject to you proving ownership of your property, they may provide you with your neighbour's name.
- Note privacy law may prevent this information being provided to you.

