

TREES AND PLANTS

Helpful Guidelines for Residents

The law that deals with the responsibility for a proper care and maintenance of trees and plants affecting neighbours in Queensland is the *Neighbourhood Disputes Resolution Act 2011*. The law applies to trees in most areas of Queensland, but there may be some exceptions. Get legal advice if you are unsure.

What is a nuisance?

A private nuisance is where someone gets in the way of your use or enjoyment of your land, or any rights you have linked to the land. Private nuisance can include overhanging tree branches, water run-off from the neighbouring property, fires and smoke, air and noise pollution. Sometimes local council laws or state laws allow the police or government inspector to investigate nuisance complaints. You should get legal advice if you have any concerns.

Who is responsible for trees and plants causing a nuisance or overhanging onto a neighbour's property?

The *Neighbourhood Disputes Resolutions Act 2011* says that it is the tree owner's responsibility to care for and maintain trees and plants, and to ensure that they do not cause serious injury to any person, cause damage to property, or interfere in a serious way with a person's use or enjoyment of their own land.

If you have overhanging tree branches or roots that go into a neighbour's yard, the law says that this is a legal nuisance. If you are the owner of the land where the tree or plant is growing, you may be responsible for paying for any damages caused by the tree or its roots. If you are a tenant you are not usually responsible unless you have planted the tree. You should get legal advice if your tree or plant has caused damage to someone else's property.

How should I deal with any complaints about trees or plants?

If you have problems with overhanging tree branches or roots:

- Talk to your neighbour directly and try and resolve the complaint first. If you don't know who the owner of the property is, you may be able to get this information from your local council or, for a fee, from the Queensland government (property, titles and valuations).
- Get help from a mediator. The Queensland government's Dispute Resolution Centres may help you with mediation.

Can I cut down overhanging branches and tree roots?

The law allows you to cut off overhanging branches and dig up roots on your property, but you must take care to not cause unnecessary damage to the neighbour's plant. You are not allowed to enter your neighbour's property to do this unless you get permission from the occupier of the property (tenant or owner who is living at the property, or the owner if the property is unoccupied).

You cannot poison the neighbour's tree or any roots that are on your property. You should only try to cut back the tree branches or cut out the roots to the fence line. This is to make sure you don't destroy the tree.

You may (but do not have to) return the branches and fruit to the owner of the tree.

Can I make my neighbour remove branches overhanging into my yard?

Yes. If the branches are hanging more than 50cm over the boundary into your yard, and they are less than 2.5 metres above the ground, you may serve a written notice on the neighbour who owns the tree, giving them at least 30 days to cut and remove the branches. The notice must ask your neighbour to inform you in writing about who is going to cut and remove the branches, and when. They must give you this notice by at least the day before work is to start, and attach a minimum of one quote. The notice serves as permission for a contractor arranged by the neighbour to enter your property to carry out the work.

If your neighbour does not remove the overhanging branches, then you may remove them yourself and send your neighbour an account for the cost. If your neighbour doesn't pay, you can recover the cost as a minor debt, up to a maximum of \$300.00. See QCAT's Tree dispute resolution for more information about recovering costs.

You may only serve one notice on the same neighbour in a 12-month period.

If the branches are more than 2.5 meters above the ground, you may remove them yourself. If you would like to know how to make the neighbour pay, seek legal advice.

What if I have another problem with the neighbour's tree other than overhanging branches?

You can make an application to the Queensland Civil and Administrative Tribunal (QCAT) about any disputes regarding neighbours trees or plants that can't be resolved by giving a notice.