Neighbourhood Disputes

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Introduction

Common neighbourhood disputes such as disagreements about fences, barking dogs, trees, damage, odour, noisy parties and other problems can be solved in various ways.

Neighbours should try to discuss the problem with each other. It is possible to use a mediator to help try to come to an agreement if both neighbours agree. Where a neighbour is in fear of another neighbour, mediation will not be an appropriate solution.

If neighbours are unable to resolve the matter by discussion (and mediation does not help), then an aggrieved neighbour may be able to complain to a relevant authority or take legal action.

Before making a complaint or taking legal action, the aggrieved neighbour should find out their neighbour's full name. Ways to find out the name include asking the neighbour directly (if it is safe to do so), asking another neighbour or investigating if the neighbour's landlord, real estate agent or the local council will share it. If the neighbour is the registered owner of the land, it is possible to pay for a current title search of the neighbour's address, which will also show the name of the landowner.

Complaints to councils or police can be made in many neighbourhood disputes, including disputes about noise on residential premises.

If making a complaint does not improve the situation, or if there is no authority that deals with the relevant dispute, people can consider taking legal action against their neighbour.

For dividing fences matters, obtaining peace and good behaviour orders, most boundary disputes and some other proceedings (including some nuisance matters), there is currently no government authority able to assist.

Legal action should be a last resort in dealing with a neighbourhood dispute. Legal action can be expensive and is unlikely to improve relationships between neighbours.

Mediation to Settle Neighbourhood Disputes

Mediation is a way of helping neighbours settle their issues of concern without having to go to court. It is a voluntary process where trained mediators act as an impartial third party and guide parties through a structured mediation process. The goal of mediation is to try to identify solutions to the problem and help people reach an agreement and end (or settle) their dispute. Mediation encourages people to discuss their concerns and to decide on a solution that is acceptable to all parties. This means saving time and legal fees, and it may help mend neighbourly relations.

In mediation, the disputing parties engage a mediator who assists the parties to communicate with each other. The mediator will not suggest a solution or decide who is right. All parties must be able to agree on the choice of mediator and the sharing of costs (if any) associated with the mediation.

An agreement reached in mediation is not legally binding, but it can be made enforceable by law if all the parties agree. When the agreement is drawn up, a statement can be included in the

agreement saying that the parties want the agreement to be legally binding. The necessary documents can then be drawn up by a solicitor.

If a dispute was referred to mediation by a court or tribunal and the parties have reached an agreement, then the court or tribunal can be asked to make a consent order. This is an order containing the terms agreed upon at the mediation and means action can be taken if a party breaches the terms of the order.

People in neighbourhood disputes should not underestimate the benefits of mediation. Even very difficult and protracted disputes can be resolved by mediation. Sometimes, the dispute may remain unresolved, but the neighbours might have been able to agree on a path to take to resolve the dispute, for example obtaining expert advice. If the parties to the mediation are unable to agree, each may be able to take legal action. However, an advantage of mediation is that it can be used in disputes where there is no legal or regulatory remedy available.

The Dispute Resolution Centre is coordinated by the Department of Justice and Attorney-General and provides mediation throughout Queensland in a wide variety of matters. The service is free for neighbourhood disputes although the Dispute Resolution Centre will assess each application and may choose not to mediate some disputes. For further information about mediation see the *Accessing Legal Assistance and Resolving Disputes* chapter.

Public and Private Nuisance

Generally, persons occupying land (owners or lessees) are entitled to the quiet enjoyment of the land. This does not extend to people who are only visitors.

If a neighbour unreasonably interferes with that quiet enjoyment, including by creating smells, sounds, pollution or any other hazard that extends past the boundaries of the property, the interference may amount to nuisance.

Public nuisance

A public nuisance is an unreasonable interference with the public's right to property. It includes conduct that interferes with public health, safety, peace or convenience.

Public nuisances, particularly those affecting the environment, may result in criminal charges or may be controlled by other laws.

Private nuisance

Private nuisance is the unlawful interference with a person's use or enjoyment of their own land or of a right connected with that land. A private nuisance can include:

- noise
- odour
- smoke

- vibrations
- dust
- some activity or intrusion that causes a reasonable fear for an occupier's safety (e.g. overhanging tree branches, aerial spraying or shooting on an adjacent rifle range)
- obstruction of rights of way
- obstruction of water supply
- interference with support to land or a wall
- blocking out a neighbour's light, when there is an obligation to provide access to light.

In order to be able to take legal action in relation to nuisance, the interference needs to be substantial and unreasonable.

Police or the local councils have the power to investigate limited kinds of nuisance complaints, take action to prevent relevant ongoing nuisance and impose fines for breaches of nuisance laws.

In addition, private nuisances may give rise to a right by one person to make a claim requesting damages or an injunction to prevent the ongoing nuisance. This is known as a common law action in nuisance.

Legislation may restrict a person's ability to bring an action in nuisance. For instance, legislation protects the operators of the Milton Brewery from actions for nuisance (arising from the emission of aerosols, fumes, light, noise, odour, particles or smoke) in relation to residences which are part of a development application made after 27 April 2009 (*Sustainable Planning Act 2009* (Qld) (Sustainable Planning Act). As parts of Queensland become more densely populated, it is likely that other industries or activities may also be given similar legislative protection.

Nuisance Law in Queensland

The law of nuisance in Queensland is contained across a variety of Acts of parliament and local laws but, in most cases, reference must be had to the common law.

It is recommended that people affected by nuisance speak to their local council, police or seek legal advice before taking action.

Statutory nuisance laws

Local governments are responsible for investigating and dealing with nuisance complaints relating to residential premises, provided that there is a local or state law in place about the issue.

Complaints relating to contaminants released into the environment by activities such as mining or manufacturing may be dealt with by the Department of Environment and Heritage Protection.

Difficulties can arise where residences are used as businesses (e.g. the parking or repair of large trucks on acreage). As suburban areas are spreading in South East Queensland, some residential

development is occurring next to industrial estates or livestock activities. The industrial activity is usually pre-existing and often subject to relevant approvals. In such circumstances, residents may have to accept living with some of the consequences of the industrial activity (e.g. noise in the early hours or odour).

The nuisance laws are complaint driven, which means a complaint must be made before a problem will be investigated. If a person making a complaint is concerned about protecting their identity, it is necessary to check with the complaint-handling body whether particular details of the complaint will be disclosed to the person or company being complained about.

Breaches of nuisance laws may result in penalties including warning notices, abatement notices and fines. If a notice or fine is issued to a person, they will normally have a right to appeal.

To lodge a complaint, a person should call the relevant local council for residential premises issues and the Department of Environment and Heritage Protection for activities associated with mining or manufacturing.

If there is no relevant authority or the relevant authority cannot provide the assistance required, a person affected by nuisance may choose to pursue their own legal action against the person or organisation causing the nuisance. This is normally a common law nuisance action.

It is always prudent to check with the local council and/or the Department of Environment and Heritage Protection before legal action is undertaken. Making a complaint is normally free but legal action is not. Generally, each council has a different set of local laws. Even if a type of nuisance is not discussed below, it is important to consult the local authority before deciding whether or not to pursue legal action.

Common law actions in nuisance

In addition to penalties for breaches of nuisance laws, a nuisance may give rise to a right to sue a person causing a nuisance. If an activity is a substantial and unreasonable interference with the use and enjoyment of land, it may be possible to bring nuisance proceedings. The person who legally occupies the land is usually the only person who can sue.

A person who creates a nuisance or, in some cases, a person who knows about the nuisance but does nothing to stop it can be sued. A person bringing a nuisance action can ask the court to make orders to stop the nuisance (with a legal action called an injunction), prevent it from occurring again in the future and perhaps compensate the person for any losses they have already suffered. Where injunctive relief (stopping the activity that constitutes nuisance) is sought, proceedings must be commenced in the District or Supreme Court, attracting the risk of a costs order if proceedings are not successful. Legal advice should be sought before commencing this sort of legal action.

Nuisance Complaints About Neighbours

Local governments are responsible for investigating and dealing with complaints relating to residential premises. Again, the Department of Environment and Heritage Protection may have the power to deal with complaints relating to mining or manufacturing activities.

Fire, smoke and ash

Depending on the source of the fire, smoke or ash, complaints can be made to the local council or the Department of Environment and Heritage Protection. Complaints about excessive smoke from residential wood fire heaters and ash from burning off can be made to the local council.

A permit is required for any fire (rural or urban) other than an indoor fire in an appropriate fireplace or stove. Additionally, most local councils provide an exemption from the permit requirement for outdoor fires used to cook food such as BBQs and small, contained open fires. An occupier who has obtained a permit for a fire may be responsible for damage caused by the fire. Most local councils have passed ordinances and local laws regulating fires, and these should be checked carefully if a landowner obtains (or wants) a permit to light a fire.

People who light fires with intent to injure a person or damage property may commit a criminal offence and, where this is suspected, a complaint should be made to police.

Air and light pollution

In relation to air and light pollution, it is necessary to check with the relevant local council to ascertain whether any local law applies to dirt and dust from construction or cleaning, fumes, smell from rubbish or compost, or light. Alternatively, depending on the source of the nuisance, the Department of Environment and Heritage Protection may need to be contacted.

Noise

Excessive noise from barking dogs, parties, televisions, radios, cars, musical instruments, air-conditioning units, pool filters and other sources may constitute a nuisance.

As with most neighbourhood problems, it is best to try to deal with noise by talking with or writing to the person creating the noise. Sometimes neighbours do not realise that their noise is disturbing other people. Making a formal complaint when the matter could be resolved by discussion or mediation can damage relationships.

If the matter cannot be resolved by talking, complaints can be made to the local council, the Department of Environment and Heritage Protection or to police, and action may be taken against the person creating or controlling the nuisance. In some cases, affected people may also (or alternatively) be able to bring common law actions in nuisance.

The available options for making a complaint or taking common law action in relation to nuisance will vary depending upon the nature of the noise (what is making it) and the location of the noise (where is it coming from).

Residential equipment and powered devices

It is necessary to contact the specific local council to ascertain whether specific residential noise problems are regulated, for example building noise, lawn mowers, swimming pool pumps, noisy air conditioners, power tools, leaf blowers, refrigeration equipment, generators, air compressors, power boats, jet skis and many other noisy devices are only to be used between specified hours and at certain volumes.

Complaints in relation to any of these activities should be made to the local council, which may have the authority to investigate, issue warning notices and on-the-spot fines if the nuisance continues.

Residential party and music noises and off-road vehicles

Queensland Police has the power to deal with complaints about excessive noise from:

- musical instruments
- stereos and amplifiers
- vehicles not presently on the road (e.g. a car in a neighbour's backyard)
- private meetings, gatherings and parties (but not noise from open air concerts, licensed premises, such as nightclubs, or authorised public meetings)
- stereo, CD, amplified and other noises emitted from private vehicles on the road or in public places.

These powers are directed to one-off or infrequent events (e.g. a party). They are not designed for ongoing noise (e.g. band practice or playing of loud music on a daily basis).

Ordinarily, complaints about ordinary noise nuisances are not emergencies. A complaint should be made to police for non-urgent matters. Upon receiving a complaint, police go to the home of the complainant to determine whether the noise levels are acceptable. If police consider the noise excessive, they can enter the premises of the noisemaker and direct that the noise be stopped and that no more noise be made for a specified period. If the noise continues, the source of the noise may be locked or removed by police. In rare cases further penalties may apply.

Residential alarm systems

A complaint may be made to police where there is excessive noise from a residential alarm system. Complaints about alarm systems should be directed to the nearest police station.

Motor vehicle and traffic noises

If the noise is coming from a car that is driving on public roads, the problem can be reported to the Department of Transport and Main Roads. The department will generally require identifying details about the car (particularly registration numbers) before it can investigate. The department can also consider requests for noise barriers on main roads, and councils may respond to concerns about compression breaking or other heavy vehicle concerns. Police also have a wide range of powers to

deal with cars making excessive noise under hooning laws, although these will generally be exercised following police detection.

Noises from licensed premises including nightclubs

The Office of Liquor and Gaming is the relevant body that licenses premises and can conduct investigations into appropriate noise levels at those premises.

Persons residing in nightclub districts may have to accept a certain level of noise intrusion from licensed premises, which is greater than residents would expect in a suburban area.

Noise from commercial premises

Some commercial and industrial properties may have development approval conditions from local councils, which must be complied with, and council can issue Enforcement Notices and prosecute any breaches. Otherwise complaints about noise from commercial premises can be made to the Department of Environment and Heritage Protection, which may investigate the complaint and issue a warning letter, infringement notice or commence legal proceedings, depending on the severity of the breach.

Rules About Neighbouring Trees and Other Plants

The most commonly used remedy for a person affected by a neighbouring tree overhanging their property (which is not a protected tree or a tree growing on council land) is to cut the tree back to the boundary line and tidily return the branches to the tree owner.

The pruning must not occur in such a way that the health of the tree will be damaged. The right to cut back extends to roots. It is important when engaging tree loppers to consider whether sufficient insurance is held by them to cover any damage which might occur; if not, a neighbour should take care to clarify that they have appropriate insurance.

The *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (Qld) (Neighbourhood Disputes Act) provides that the proper care and maintenance of a tree will be the responsibility of the tree-keeper and provides greater choices for neighbours about trees affecting their property:

If a neighbour exercises the common law of abatement (e.g. by lopping branches and roots to the boundary), the neighbour can decide whether or not to return the lopped branches or roots. When exercising the right of abatement, neighbours must take care to comply with any applicable tree or vegetation protection orders.

If a neighbour wants the tree-keeper to take responsibility for lopping the branches of their tree hanging over the boundary, they can serve a notice for overhanging branches upon the tree-keeper. This notice can be used for branches which are more than 50 cm over the boundary and 2.5 metres or less above the ground. If the tree-keeper does not respond to the notice, the neighbour can proceed to have the lopping done and recover from the tree-keeper a maximum sum of $300 (s 58 Neighbourhood Disputes Act). The notice system cannot be used if there is a vegetation or tree

protection order over the tree, and the Neighbourhood Disputes Act lists a number of requirements for a valid notice (s 57 Neighbourhood Disputes Act).

Responsibility is placed on the tree-keeper to ensure that their neighbour's land is not affected by a tree growing on the tree-keeper's land. For the purposes of the Neighbourhood Disputes Act, land is affected by a tree if a neighbour can demonstrate that branches from the tree overhanging their land, or the tree caused or is likely within the next 12 months to cause serious injury to a person, serious damage to a neighbour's land or property or substantial, ongoing or unreasonable interference with a person's use and enjoyment of the person's land (s 46 Neighbourhood Disputes Act). The Queensland Civil and Administrative Tribunal (QCAT) has jurisdiction to hear and decide any matter in relation to a tree that allegedly affects the land.

The Neighbourhood Disputes Act provides that in any decision by QCAT, the primary consideration is the safety of any person (s 71 Neighbourhood Disputes Act).

If trees are growing through power lines, telephone lines, cable television lines and are on council land, it is necessary to contact the relevant power, telephone or television company, or council to trim the trees. Some of these entities have lists of trees that are recommended for planting under their lines. Local councils may have local laws about the pruning of trees on council land, and it may be necessary to contact the local council for approval before lopping branches of a council tree, even if it overhangs a neighbouring property.

Negligence

A tree owner can also be liable under the ordinary principles of negligence if the tree causes damage or injury that the neighbour ought to have foreseen and that could, with reasonable care, have been avoided. If you are concerned about a tree growing on your neighbour's property, it is a good idea to let your neighbour know about your concerns and confirm your conversation in writing. This way you have evidence that you have alerted your neighbour about the potential danger (see the *Accidents and Injury* chapter).

Protected trees

Many local councils have local laws that deal with the protection of vegetation.

These local laws restrict the ways landowners deal with trees. In most cases, landowners need a permit to remove protected trees but are still able to prune trees (with restrictions) and may remove trees that present an imminent hazard to life or property (although photographic evidence of the threat may be required).

However, unless it is an emergency, it would be prudent to check with the local council first because there are on-the-spot fines and significant court-imposed penalties for breaches of local laws.

Nominating a tree for protection

Trees with significant biodiversity or environmental value, landscape character or cultural and historical value are considered worthy of protection.

There are two ways to nominate a tree for protection. The first is to write to the local council requesting a vegetation protection order be made over the tree. The second is, if a tree is associated with a place of cultural heritage significance, to make an application to the Department of Environment and Heritage Protection requesting that the tree be registered on the Queensland Heritage Register.

Land clearing

Landholders should contact the State Assessment and Referral Agency or their local council before they clear any trees, no matter how few trees are threatened. There are exemptions to the law for some activities for example routine clearing for fence lines, yards, firebreaks and burning off.

Smaller landowners (especially in urban areas) should contact their local council. For more information see the *Laws Affecting the Environment* chapter.

Noxious plants and weeds

The *Biosecurity Act 2014* (Qld) contains a list of plants that are restricted invasive plants, and the Biosecurity Regulation prescribes methods of disposal for certain invasive plants. Local councils also have biosecurity obligations in relation to managing invasive plants, and may also have an additional list of plants that are declared pests at a local level.

If a neighbour has plants or trees in their garden that are declared pests or weeds, especially if there is a concern that they might spread or affect the health of people in the local area, the neighbour should be informed of the concern.

If the neighbour takes no action after the matter is raised with them, the local council should be contacted. The council may issue a notice for the landowner to control or remove the offending plants. If the notice is ignored, the local council may remove the plants themselves and present the landowner with a bill. For a list of declared pests and any weeds relevant to a specific local area, the local council should be contacted. However, local councils are reluctant to become involved in disputes about plants or trees on private property.

Rules About Neighbouring Animals

Complaints about mistreatment of animals can be made to police or the Royal Society for the Prevention of Cruelty to Animals.

Registration of cats and dogs

Domestic dogs and cats must be registered, and specific, prescribed and permanent identification devices must be implanted into the animal. Depending on the age of the animal, the responsibility

to arrange the implant lies with either the supplier of an animal or the animal's owner. There are provisions in the *Animal Management (Cats and Dogs) Act 2008* (Qld) (Animal Management Act) that require animals already owned before 1 July 2009 to be implanted, and a local council or vet should be able to tell an animal's owner when it is necessary for them to arrange for the procedure to be carried out on their animal. An individual (other than the animal's owner) cannot usually find out information about an animal's owner from the registration register, but the local council may use this information to regulate the animal in accordance with the law.

To find out the number of dogs allowed in a certain area and whether a permit is required, people should check with the local council. Normally, two or three dogs may be kept in a residential home. Generally, it is also an animal owners' responsibility to restrain and clean up after their dogs in public places. Dogs that are in public places and not under the control of a person may be seized by a person authorised by the local council. Dogs that are a risk to public health, or dangerous or menacing dogs can also be seized.

Barking dogs

Local laws may make provision about the amount of barking which is considered excessive.

A complaint can be made to the local council that can investigate and issue an abatement notice to the dog's owner requiring that excessive barking ceases. If the dog owner fails to comply with the abatement notice, they may be fined and removal orders or impoundment can occur. Some council's refer dog owners to training programs to help them deal with the dog's barking, instead of proceeding by way of fine. Where dogs are kept at commercial or industrial premises, complaints about noise should be made to the Department of Environment and Heritage Protection.

Dangerous and menacing dogs

Dogs that are vicious, menacing or destructive constitute a neighbourhood nuisance. People annoyed by a dog should attempt to discuss the problem with the dog's owner. If a solution cannot be found or the animal has attacked or caused fear of an attack, a complaint may be made to the local council.

Local laws may make provision about dangerous dog declarations and consequences.

If a dog causes fear, seriously attacks a person or other animal, or is likely to seriously attack or cause fear, the dog may be declared dangerous. If a dog attack (or threatened attack) on a person or another animal is not serious, the dog may be declared menacing. Once a declaration is made, the owner must comply with conditions of signage, fencing, desexing, muzzling and other restraint. Contravention of a declaration may lead to a large fine and the seizure and destruction of the dog. Generally, a person has a few days to appeal a dog destruction order.

Where a dog has caused injury to a person or damage to property, the person who has suffered the injury or damage may take civil action to recover damages against the owner of the dog. In addition, the Animal Management Act also imposes significant penalties which may be sought

against people who own and are responsible for dogs which attack people or other animals or cause fear. If the person allows or encourages the dog to attack, there may be additional penalties. It is possible that a criminal offence may have been committed under s 289 of the *Criminal Code Act 1899* (Qld).

The occupiers of commercial premises that use guard dogs for security purposes should check with the local council for special permit requirements.

Dogs in rural areas may be destroyed by the landowner or an authorised person who holds a valid weapons licence if they are believed not to be under someone's control, and they have attacked or are about to attack livestock on a person's land.

Restricted dogs

The Queensland State Government has laws to control the keeping of certain types of dogs, which are referred to as restricted dogs (e.g. the dogo Argentino, fila Brasileiro, Japanese tosa, American Pit Bull Terrier or Pit Bull Terrier, Perro de Presa Canario or Presa Canario). However, these restrictions do not apply to the American Staffordshire Terrier.

The circumstances in which dogs of these breeds can be kept, bred and sold are strictly controlled. Permits must be obtained from local councils if any of these breeds of dog are to be kept. Restricted dogs must be kept in certain enclosures with restricted access and suitably high, secure and childproof fencing. Access to the front entrance of the house must not be obstructed by the presence of a restricted dog. Appropriate identifications of a restricted dog must also be provided on both the dog and its enclosure.

Cats

If a troublesome or destructive cat has an owner, any problem caused by the cat should be discussed with the owner. Some commercial products are available from vets and pet shops that can deter cats from wandering in gardens and backyards. If a cat appears to be homeless or feral, the local council should be called to catch the animal. Under no circumstances should a person injure or kill a cat, even if it appears to be feral and is creating a nuisance. To do so might result in criminal charges for animal cruelty.

Cats need to be registered and have appropriate identification. Cat owners should check with the local council as to whether a permit is required to keep or breed cats in their local area.

Other animals

It is normally illegal to keep native animals as pets without a permit. In some cases, native animals may be kept if the owner is an Aboriginal or Torres Strait Island person, and they are keeping the animal in accordance with Aboriginal or Torres Strait Islander custom. There are also other limited circumstances when native animals can be kept on domestic premises. Permits can be obtained from the Department of Environment and Heritage Protection, and enquiries should be directed to that department and the local council.

Local councils usually regulate the keeping of horses, cattle, sheep, pigs and other animals. A permit is normally required to keep any such animal in a suburban area, although in many local council areas, a small number of chickens (roosters excluded), geese or ducks can be kept without a permit. In general, poultry sheds should be set back at least one metre from a dividing fence. Local councils should be consulted prior to housing any animal, particularly if the property owner lives in a suburban or urban area.

Untidy Neighbours

It is not unusual for conflict to arise about the state of a neighbour's backyard or 'eyesores' like old car bodies and machinery.

The way in which neighbours maintain their property is entirely their own business and, unless it causes some nuisance to the adjoining property occupier, there is little that can be done.

A complaint about excessive odours from rubbish or compost heaps can be made to the local council. In the absence of a smell, there is little a neighbour can do about the apparent eyesore.

If the general state of repair of the neighbour's property is such that it constitutes a threat to public health or safety, or a landowner allows their land to become overgrown with vegetation or suspected noxious plants, the local council should be contacted. Most local councils have local laws dealing with overgrown allotments.

Public health risks

Under the *Public Health Act 2005* (Qld), a public health order may be issued to a person who is responsible for something which is a risk to public health. A public health risk includes something that is (or may become) the breeding ground, food source or home of a pest.

Some activities or things may be public health problems in some situations but perfectly alright in many other circumstances. If any of the following is or is likely to be hazardous to human health, or contributes to disease or the transmission of an infectious condition in humans, it may be a public health risk:

- water (recycled or otherwise)
- waste
- animals and animal remains
- pesticides, herbicides and other chemicals
- lead and paint
- other chemicals and substances which may be released (including asbestos and fibreglass)
- any structure, substance or other thing that is or is likely to harbour designated pests, or become a breeding ground or a source of food for it.

A public health order may require a person to:

- clean or disinfect a place
- arrange pest or insect control
- demolish, remove or dispose of items or structures
- destroy animals
- stop using a place for a particular purpose
- take other steps or stop other actions (as appropriate or reasonably necessary in the circumstances).

Failure to comply with a public health order may result in a fine or further enforcement action.

Complaints about possible public health risks may be made to the health inspectors of local councils or the Department of Environment and Heritage Protection. The agency responsible for responding to the risk depends on the type and scope of the problem.

For other environmental and health hazards see the *Laws Affecting the Environment* chapter.

Land Use

Local government laws regulate the use of properties through their planning schemes, which are developed under the Sustainable Planning Act. Planning approval is not required if a proposed activity is self-assessable and compliant with the applicable development codes under the planning scheme. An example of where planning approval is required is to change the use of a property from residential use to commercial use.

In the first instance, complaints in relation to land use should always be directed to the relevant council.

Rain and Storm Water Problems Caused by Neighbours

Water naturally flows downhill, and rainwater may over the course of time carve out particular patterns of flow. Sometimes people alter water flow by altering the natural lie of the land or by installing devices to direct rainwater. Laying concrete, planting gardens and building retaining walls all have the potential to alter the flow of water from one property to another.

Normally, a downhill neighbour cannot hold an uphill neighbour responsible for water flowing onto their land after rain, if the uphill neighbour has not altered the lie of the land or taken any action to direct (or release) the flow of water. However, if the uphill neighbour has altered the land or redirected the flow of water, and the alterations have caused a negative impact on the downhill neighbour, the adversely affected neighbour may be able to take a nuisance action in relation to the water nuisance.

Disputes with a Neighbour Over Dividing Fences

A fence on your own property

People may erect fences on their own land without the consent of their neighbours and they cannot normally require the neighbours to contribute to the cost of such a fence. Such a fence may, however, act as a dividing fence, whether or not it is on the boundary line and therefore be subject to some of the laws relating to dividing fences. Careful regard should be had to a property's boundary line when building such a fence to avoid unintentionally allowing the neighbour to come into possession of part of the land.

No formal approvals are required for fences up to two metres in height that are associated with an existing house, are not associated with a swimming pool, not part of a retaining wall and would not restrict water run-off from adjoining properties.

A fence between properties

Fences built on a common boundary between properties are dividing fences. The construction, repair and removal of these fences are covered by the Neighbourhood Disputes Act. Generally, dividing fences involve joint responsibility for construction, maintenance and repair.

If agreement cannot be reached between neighbours as to the construction, repair or removal of a dividing fence, legal advice should be sought. Caxton Legal Centre maintains a free up-to-date self-help kit on dividing fences.

The Neighbourhood Disputes Act defines a fence as a structure, ditch or embankment, or a hedge or similar vegetation barrier, enclosing any land, whether or not it extends along the whole boundary of the land separating the neighbours. It includes any gate, cattle grid or apparatus necessary for the operation of a fence (s 11 Neighbourhood Disputes Act). A dividing fence is constructed on the common boundary line of adjoining land. Sometimes, a dividing fence can be built off the common boundary line when it is impractical due to the physical features of the land (s 12 Neighbourhood Disputes Act).

A dividing fence is owned equally by the adjoining neighbours if it is built on the common boundary line (s 19 Neighbourhood Disputes Act). However, a fence or part of a fence built on the neighbour's land is owned by that neighbour, even if the other neighbour contributed to the construction of the fence.

There should be a sufficient dividing fence between two parcels of land if an adjoining owner requests one, even if one or both parcels of land are vacant (s 20 Neighbourhood Disputes Act). Generally, neighbours must contribute equally to the cost of building and maintaining a sufficient dividing fence and not attach something to a dividing fence that unreasonably and materially alters or damages it (ss 7, 21, 27 Neighbourhood Disputes Act).

Under the Neighbourhood Disputes Act, there are some circumstances where a dividing fence is not required:

- if both neighbours of adjoining land do not want a dividing fence
- where either parcel of land is outside the scope of the bill (e.g. public land or a stock route)
- where both parcels of land are agricultural land.

In such cases, neighbours will need to rely on any agreement reached with the neighbour or the common law. It would be worthwhile recording the terms of any such agreement. However, those agreements generally would not bind subsequent purchasers of either property.

The Neighbourhood Disputes Act distinguishes between fences and retaining walls. Retaining walls serve a different purpose than fences. They are engineered to support built-up or excavated earth. Retaining walls are not normally a matter of joint responsibility for neighbours because a retaining wall is usually of more benefit to one neighbour. However, the Queensland Civil and Administrative Tribunal (QCAT) has limited power to make orders about a retaining wall if the dividing fence cannot otherwise be repaired.

A dividing fence is considered a sufficient dividing fence in the following circumstances where:

- two parcels of residential land are adjoined, the fence must be between 0.5 m and 1.8 m in height and constructed substantially of prescribed material (see s 13(3) of the Neighbourhood Disputes Act for a list of prescribed materials)
- two parcels of pastoral land are adjoined, the fence must be able to restrain livestock of the type grazing on each of the parcels of land
- the owners agree a particular fence is a sufficient dividing fence
- QCAT decides that a particular fence is sufficient. There are specific factors that QCAT must take into account (e.g. types of fences in the neighbourhood) (s 13, 36 Neighbourhood Disputes Act).

Adjoining neighbours are each liable for half the cost of fencing work required to have a sufficient dividing fence. However, where one neighbour wants to have more work done than is necessary for a sufficient dividing fence, then they will be liable to pay the extra expenses. For example, if a neighbour wants a higher fence for privacy or security, they should meet this extra cost. This does not mean that QCAT will order that the fence will be built according to their wishes. In those circumstances, QCAT would consider the wishes of each neighbour and the other factors that QCAT is required to take into account.

Pool fencing

There is a single standard that applies to regulated pools.

Generally, pool barriers located on the boundary of a property will need to be at least 1.2 m high if the non-climbable area is on the outside of the fence (otherwise they need to be 1.8m high), and the responsibility for the construction, maintenance and repair will be solely borne by the pool owner.

Heavy penalties apply in cases in which the pool safety barrier does not meet the applicable standard.

Land bordering Crown land or a local park

If the land borders Crown land (which is not leased to another person or held in freehold by the Crown), the Crown is not liable to contribute towards the cost of a dividing fence. The same applies if the land is owned by the local government or is a designated reserve or public park. It may be necessary to ascertain how the Crown owns the land, for example, state schools are generally situated on freehold land and the state is subject to the obligation to contribute to a dividing fence.

Unauthorised Entry or Trespass

Trespass is a civil wrong and some forms of trespass may also constitute a criminal offence. The most common form of trespass is entering or remaining on land without the permission of the owner. Trespass can also include burrowing under land or suspending an object over the land.

Suing for trespass

An occupier in actual possession of a property (or an owner who retakes possession) can sue for trespass.

It is not necessary to prove that the trespasser caused any damage to the land unless compensation for damage is claimed.

Prosecution of trespassers

Many premises display a notice stating that trespassers will be prosecuted. This notice is misleading. Prosecution involves a criminal charge. The notice really means that civil proceedings will be commenced against the trespasser or that information about an alleged or suspected trespass may be passed on to police.

Trespassing can be a crime in some circumstances. People who are in or on any premises without a lawful excuse may be guilty of an offence.

Authorised entry onto land

Police officers have wide powers to enter premises without being liable to prosecution for trespass. Some other officials (e.g. gas and electricity employees, post office officials, and health and agriculture inspectors) are also specifically authorised by various laws to enter premises for certain purposes without being liable for trespass.

Defences to an action of trespass

The defences to an action in trespass are:

- the authority of law
- abatement of some types of nuisance (e.g. a spreading fire)

- permission to enter onto the land given by the person entitled to possession.

It is generally implied that a homeowner consents to any person entering using the usual point of entry to reach the front door, unless there is a sign indicating the lack of consent or a locked door or gate restricting access to the front door.

Remedies

Remedies against a trespasser are:

- ejectment, using sufficient force only—an occupier can eject a trespasser from the property but is not allowed to use any more force than is necessary. Normally, no force is considered necessary to defend a property against a trespasser. However, if the trespasser uses force during or after entry, the occupier is justified in using such force as is necessary to protect themselves and the property. If the trespasser assaults the occupier during the course of the ejectment, the occupier may need to act in self-defence. When an occupier uses greater force than the court considers reasonable in the circumstances, the trespasser may sue the occupier for assault. So, an unarmed person who trespasses in another person's back garden might be able to sue the occupier if the occupier used unreasonable force (e.g. shooting at the person). The occupier may also be charged by police for assault
- a warrant of possession—the Queensland Civil and Administrative Tribunal may issue a warrant of possession to a lessor allowing them (or a police officer) to recover possession of their premises at the expiration or termination of a tenant's lease (*Residential Tenancies and Rooming Accommodation Act 2008* (Qld)) (see the *Residential Tenancy* chapter)
- an appropriate order from a court—depending on the legal action taken, it may be possible to obtain an order for either ejectment, an injunction or other order restraining a person from entering or remaining on a particular piece of land
- a court action for damages.

When ownership of land is in dispute, the necessary District or Supreme Court proceedings will often be lengthy and expensive.

Legal Notices

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