

## Neighbourhood Disputes – Trees & Gardens Fact Sheet – November 2007

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Trees and plants are a common cause of neighbourhood disputes. Overhanging tree branches, or tree roots encroaching onto your land, are the usual problems, although poisonous plants can also cause disputes between neighbours. The following outlines your rights and responsibilities and some tips on how to resolve a dispute using the private nuisance procedure.

### **Rights & Responsibilities:**

- You are entitled to cut off the overhanging foliage, but only to the boundary line between your properties
- If tree roots are causing physical damage such as lifting your concrete, you may cut the roots to the line of the boundary
- You must be careful not to kill the tree or cause the tree to become unstable because if it falls you may be liable for the damage it causes
- You do not have to notify your neighbour of your intention to prune or cut roots
- You are not entitled to enter your neighbour's land to carry out pruning without their permission – otherwise it may be considered trespassing
- The branches and root off cuts do not belong to you and should be returned to the neighbour – or at least offer them back.
- If the neighbour does not want the off-cuts returned and you do not want to dispose of them yourself, you can place them on your neighbour's property taking care not to cause any damage or trespass
- If you hire someone to help you cut the branches or roots, you are NOT automatically entitled to a refund from your neighbour.
- Poisonous plants such as oleander and yew are covered under the Health Act. If you are unable to resolve this type of dispute with your neighbour using the private nuisance process, then you should contact your local council's health services section for assistance
- You are responsible for keeping plants growing on your property trimmed so that they do not overhang the footpath or nature strip below the required Council limit. This is often three metres, but you should check with your Council.
- Do not cut down trees on your property without first checking Council restrictions as some Councils have a 'green' policy and you are required to get a permit.

### **Remedies:**

- Talk to your neighbour first – it is important to preserve neighbourhood relationships
- Try to negotiate with your neighbour if there is something you want your neighbour to do or pay for
- Consider mediation – contact the Dispute Settlement Centre – 9603 8370
- Write a letter of demand if you require your neighbour to do something or you are claiming for damages to your property – this can be done by yourself or with the assistance of a lawyer.
- Issue a Magistrate's Court Complaint – it is suggested that you seek independent legal advice at this stage.

**For further information contact the Eastern Community Legal Centre on 9285 4822 for free legal advice on this and other legal issues.**

*This information is to be considered a guide only and not a replacement for legal advice*

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