

OVERHANGING BRANCHES & TREE ROOTS

Building Information Sheet #11

This information is taken from the Legal Aid website and is provided as a guide regarding common questions about neighbour's overhanging tree branches and roots. Further information can be obtained from - www.legalaid.wa.gov.au

Extracts from Legal Aid relating to Overhanging Tree Branches and Roots

What can I do about my neighbour's overhanging branches and/or invading tree roots?

If you have a problem with overhanging branches or invading tree roots talk to your neighbour and try to resolve the complaint first.

Can I cut down an overhanging branch or a tree root that has come on to my property?

If a branch or root comes onto your side of the fence, you are allowed to:

- cut off the branch to the point it overhangs your property
- dig up the root and remove it *up to the boundary or fence line of your land.*

You must not:

- cut the branch or dig up the root on your neighbour's side or enter your neighbour's property without their agreement
- poison the neighbour's tree or any roots that are on your property
- cause unnecessary damage to the tree.

Do I have to let my neighbour know?

You do not have to let your neighbour know you intend to cut things back from your property, but it is a good idea to let them know there is a problem and what you are going to do.

Do I need anyone else's permission?

Some local governments have Tree Preservation Orders in place. These may prohibit the pruning and removal of specified trees. Check with your local government.

What should I do with what I cut off?

Any root, branch, flower or fruit growing on a branch that you cut back still belongs to the tree's owner and should be returned to your neighbour. With the owner's permission, you could throw it out.

Be careful about how they are returned. You are responsible for any damage or littering that might happen. It is sensible to let your neighbour know what you are going to do.

How do I get payment for removal of branches or roots or any damage caused by my neighbour's tree?

Repairing damage caused by a neighbour's tree can be costly: roots can damage foundations, block drains or raise brick paving; and overhanging branches can drop leaves into your gutters or prevent your own trees and crops from growing.

If you need to have repairs done or have to get a specialist in to remove roots or branches, write a letter to your neighbour (and keep a copy) -

- setting out what the damage is;
- giving them copies of quotes for getting the work done; and
- asking them to pay to fix the problem so it does not happen again.

Once your neighbour knows of the problem (or should have become aware of it) they have a responsibility to fix the problem so it does not keep going or worsen.

If there is a cost involved in fixing the problem, you should reach an agreement with your neighbour about who will pay before you start the job.

What if we cannot reach an agreement about who should pay for the removal or damage?

Mediation services are available that can help neighbours reach an agreement when there is a dispute. Legal action against neighbours can lead to bad relationships that cannot be repaired, so where possible, think about negotiating an agreement or going to a dispute resolution service instead of taking court action. For more information visit - www.legalaid.wa.gov.au.

If you cannot reach an agreement, you may have to apply to court for an order that your neighbour has to have the branches or roots removed.

Before taking any steps that may become costly or starting any legal action, get legal advice.

My neighbour's tree has fruit that overhangs in my property. Who owns the fruit?

The fruit belongs to the owner of the tree.

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