

# Avoiding Disputes about Trees, Fences and Buildings

The *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* provides options for resolving tree disputes across property boundaries. More information on the responsibilities of tree-keepers, including dealing with overhanging branches and a step-by-step guide to dealing with neighbourhood disputes go to <https://www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings/>.

Trees and fences are a very common cause of disputes between neighbours, and no two situations are exactly alike. Tree disputes are often about the damage they cause to a neighbour's property, injury from falling branches, or nuisance—leaves blocking gutters or dropping into a neighbour's pool.

Dividing fence disputes are often about the building or upkeep of a fence, including the cost, who should pay and how much, and the type or height of the fence; particularly when one neighbour wants a fence for a specific purpose such as keeping in a dog.

Vegetation removal on private property is assessed by Council under the Douglas Shire Planning Scheme Vegetation Damage Code. In some instances, vegetation damage is self assessable development. In other instances a development permit is required.

This quick step-by-step guide can help you and your neighbour find a solution to your problem and keep you on good terms without having to resort to legal action.

## Step 1 – Know the rules

### Rules about trees

There are a number of things you can legally do if your neighbour's tree is affecting your property or safety. These options are outlined on the website link above.

The best ways to avoid problems with neighbours over trees and shrubs growing on your property is to know your legal responsibilities as a tree-keeper.

### Rules about dividing fences

If a dividing fence is built on the common boundary line, it is owned equally by the adjoining neighbours. Learn about your legal responsibilities over dividing. Learn more about the rules at the website link above.

It is always best to work through problems over trees and shrubs and the build and maintenance of a dividing fence is to talk directly with your neighbour. This will be quicker, cheaper and less stressful than taking legal action.

### Rules about building disputes

As building disputes are often between a property owner and a qualified tradesperson—who they hired to do a job for them—the resolution process is different to disputes between neighbours over trees and fences. Learn about resolving building disputes at <https://www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings/resolving-tree-and-fence-disputes/resolving-building-disputes>.

Building disputes can often be avoided by taking extra steps when hiring someone to complete work on your property and agreeing on a contract with them.

## Step 2 - Talk to your neighbour

Often, a friendly chat is all that is needed; if your neighbour is not aware of a problem, then they can't fix it.

Let them know you want to have a face-to-face chat. Knock on their door or slip a note in their letterbox, but do not try to resolve the situation with notes and letters; you need to resolve the problem in person, together.

Find a time and place where you can both discuss the problem. Think beforehand about what you want to say. It is important to state clearly what the problem is and how you feel about it.

**Do not:**

- blame the other person
- begin by stating your view of what should be done
- resort to name calling—it only makes it harder for the person to hear what you are saying
- make wild accusations
- leave out a problem that seems less important or is hard to talk about—this may ruin any solution you come up with.

**Do:**

- explain how the problem is affecting you
- give your neighbour a chance to tell their side of the story
- be prepared to listen and let the other person know you are listening
- try working on a resolution together
- take time to work on a solution and get it right.

Taking time to talk the problem through could save you time and money by coming to a solution together.

**Step 3 - Get it in writing**

When you and your neighbour agree on a solution, get it in writing. Agree to get together again in the near future to discuss how things are going—and do not forget to do it.

If you and your neighbour cannot agree, consider getting legal advice about your other options for resolving this situation.

**Step 4 - Seek legal advice**

If you need more specific information about how the law applies in your situation—and your options to solve the dispute—you may need legal advice.

You can get legal advice from:

- your [local community legal centre](http://www.qails.org.au/01_directory/search.asp?action=search) ([http://www.qails.org.au/01\\_directory/search.asp?action=search](http://www.qails.org.au/01_directory/search.asp?action=search))
- a private lawyer - can refer you to a lawyer for your needs.

Legal Aid Queensland cannot give you legal advice about tree and fence disputes; however they can give you the contact details of your local community legal centre.

**Step 5 - Go to mediation**

Mediation is another way to settle disputes between neighbours without having to go to court. Dispute Resolution Centres (<https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/setting-disputes-out-of-court/dispute-resolution-centres>)—based in Brisbane, Hervey Bay, Rockhampton, Mackay, Townsville and Cairns—have trained mediators who can act as a neutral third party. They will guide you through a structured mediation process to resolve your dispute.

Mediation is cheaper, easier and quicker than taking legal action and, in many cases, the process is free.

**Step 6 – Resolving a dispute through QCAT**

Queensland Civil and Administrative Tribunal (QCAT) can make decisions about disputes over trees growing on residential land and for fence disputes.

QCAT's decision is legally binding and can be enforced through the courts; however, resolving a dispute through QCAT is often cheaper than taking a case to court. QCAT can help you come to an agreement through mediation and if a tribunal hearing is necessary you do not need a lawyer to represent you.

**Please note that Council officers do not inspect properties to check a tree to determine if the work has been carried out as required by an order or to carry out the work if the work has not been carried out as required by an order.**

**The Act Does Not Apply to all Trees**

The Act does not apply to trees situated on rural land, land that is more than four hectares in size, or land owned by a Local Government that is used as a public park. The Act excludes trees planted or maintained for certain purposes such as for commercial purposes or as a condition of a Development Approval. The application of the trees provisions is limited to urban areas and to cases where the land affected by a tree adjoins the neighbour's property or where the lands are separated by a road.