



NEIGHBOUR ISSUES

Below is a list of common neighbour issues that we come across in practice.

In most scenarios where there is no immediate danger to you or your property the first step should be to try and talk to your neighbour and reach a resolution.

You can contact us at the CQ Community Legal Centre for further advice on any of these neighbour issues.

EXCESSIVE NOISE – from party, amplified music, motors, generators, and guests.

- Report to Police. Police can issue a noise abatement direction if they consider noise is excessive. Will direct the person to immediately stop the noise and cease it for up to 96 hours.
- If not complied with, police can seize the property causing the noise. If in a unit block and noise is a continuing problem, you can complain to Body Corporate which can issue breach notices.

BARKING DOGS

- Report to Council – some Councils require a diary, recording the barking over a 7-day period before they will investigate. Barking must unreasonably disrupt another person's daily activities.
- Council can issue compliance notices, infringement notices and fines.
- If in a unit block and barking is a continuing problem, you can complain to Body Corporate which can issue breach notices.

OTHER NOISE NUISANCES

- Report to Council - Under the *Environmental Protection Act 1994* there are noise limits for regulated devices such as generators, lawnmowers, impacting tools, power tools and air conditioning units. There are also prescribed times as to when these items should not be used.
- If such a device exceeds noise limits the Council can issue on the spot fines. If in a unit block and noise is a continuing problem, you can complain to Body Corporate which can issue breach notices.

OTHER ENVIRONMENTAL NUISANCES

- An environmental nuisance is an unreasonable interference with another person's normal daily activities, and, besides noise, it can be caused by odour, light, fumes, aerosols, particles of smoke etc. Report to Council who are obliged to investigate and determine whether an offence against the *Environmental Protection Act* has been committed.
- If in a unit block and the activity is a continuing problem, you can complain to Body Corporate which can issue breach notices.

THREATS TO PERSON OR PROPERTY

- If a neighbour is undertaking any activity that threatens to cause harm to you or your property you can contact the Police if in immediate danger or otherwise apply to the Magistrates Court for a *Peace and Good Behaviour Order*. Note that generally harassment or verbal abuse is not sufficient for such an Order to be made by the Court.

HARASSMENT OR VERBAL ABUSE

- Generally, there is no remedy unless there are threats of violence or the abuse amounts to domestic violence, sexual harassment or stalking. If so, contact police.
- If the person making the threats or harassment is a tenant, they may be in breach of their lease so the behaviour can be reported to their landlord, agent or relevant Management body. Clause 21(2) of the *General Tenancy Agreement* provides that the tenant must not:
 - (a) use the premises for an illegal purpose; or
 - (b) cause a nuisance by the use of the premises (Examples of things that may constitute a nuisance: • using paints or chemicals on the premises that go onto or cause odours on adjoining land • causing loud noises • allowing large amounts of water to escape onto adjoining land) ; or
 - (c) interfere with the reasonable peace, comfort, or privacy of a neighbour of the tenant; or
 - (d) allow another person on the premises to interfere with the reasonable peace, comfort, or privacy of a neighbour of the tenant.

STALKING

It is a criminal offence if a person intentionally directs their attention to another person in a manner that is harassing, unwanted, harmful or threatening. Report to Police. The type of behaviour covered is:

- i. following, loitering near, watching or approaching a person;
- ii. contacting a person in any way, including, for example, by telephone, mail, fax, email or through the use of any technology;
- iii. loitering near, watching, approaching or entering a place where a person lives, works or visits;

- iv. monitoring, tracking or surveying a person's movements, activities or interpersonal associations without the person's consent;
- v. leaving offensive material where it will be found by, given to or brought to the attention of, a person;
- vi. publishing offensive material on a website, social media platform or online social network in a way that will be found by, or brought to the attention of, a person;
- vii. giving offensive material to a person, directly or indirectly, including by using a website, social media platform or online social network;
- viii. an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;
- ix. an act of violence, or a threat of violence, against, or against property of, anyone.

The behaviour must also be such as:

- would cause apprehension or fear, reasonably arising in all of the circumstances, of violence to, or against property of, you or another person; or
- cause detriment, reasonably arising in all the circumstances, to you or another person.

CAMERA SURVEILLANCE

- It is a criminal offence to record people without their consent in places where they would expect to be private such as bedroom, bathroom etc or if recording children – contact police. Installing a camera can be in breach of Body Corporate Rules if in a unit block. Otherwise, there is no remedy.

DIVIDING FENCE DISPUTES

- A dividing fence is owned equally by the adjoining owners. Owners are required to pay for a sufficient dividing fence. To do work on a dividing fence or to replace it, requires agreement between the parties as to the type of new fence and the amount each party is to contribute. The agreement is usually obtained through a Notice to Contribute and its acceptance by the other party. If agreement cannot be reached, you need to apply to QCAT for an order. If you do work on a dividing fence without going through this process you cannot recover the cost and may be ordered by QCAT to reinstate the fence to its original condition. Retaining walls are not a dividing fence. QCAT cannot make orders in respect of retaining walls unless it is necessary work to resolve a dividing fence dispute.

TREE DISPUTES

- If a tree is situated on your neighbour's property and overhangs your land; or it has caused or is likely to cause in the next 12 months -
 - (a) serious injury to a person on the land; or
 - (b) serious damage to a person's land or any property on the land; or

(c) substantial, ongoing and unreasonable interference with a person's use and enjoyment of the person's land

then you can apply to QCAT to for orders regarding its removal or pruning. If you do not want the other side to pay you can cut back overhanging branches to the fence line if it does not make the tree unstable.

WATER RUNOFF and UNDERMINING

- This constitutes a private nuisance if the neighbour's action causes or creates or contributes to a substantial and unreasonable interference with your use and enjoyment of your land or has caused physical damage to your land. For orders for compensation a Magistrates Court or District Court application is required depending on the damages claimed. If you want an injunction or similar order it must be to the District Court. There is no remedy if these criteria are not satisfied unless there has been breach of a Council by-law – in that case you should check with Council regarding your circumstances and if it can take any action.

RETAINING WALLS

Generally, repairs to retaining walls are the responsibility of the party for whose benefit the wall was erected. This depends on the circumstances, however. If the wall is above a certain height the work needs to be done by a QBCC licenced person and comply with planning approvals and the Building Code. Disputes may need to go to the *Planning and Environment Court*.

CONTACT US FOR FURTHER ADVICE

If you continue to have ongoing issues with your neighbour, please contact us for advice.



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Disclaimer: The information contained in this handout is general information only current as at May 2024. Whilst every effort has been made to make it accurate the law is constantly changing. This handout should not be used as a substitute for legal advice.