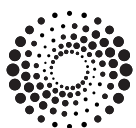


# **The Law Handbook**

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**15th EDITION**



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# Neighbours

Nadine Behan – Legal Writer

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# Introduction

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**[32.10]** Sharing our fences, walls, peace and quiet, even the air we breathe, with our neighbours is not always easy. Disputes between neighbours are now one of the most common kinds of dispute.

Although much has improved, there is no single, neat category of neighbour law to deal with these disputes. The law sprawls across different jurisdictions, legislation and cases, involving different courts and tribunals and government departments.

This chapter deals with the main kinds of neighbourhood dispute. It sets out the law, the rights and responsibilities between neighbours and the remedies available to manage or resolve the problem.

Many disputes can be solved by non-legal means. If you can, try talking to your neighbour. Explain how the problem is affecting you, give options for fixing it and try to reach agreement.

Community Justice Centres can also help. Across NSW, they offer free, confidential

mediation for neighbour disputes (see Chapter 18, Dispute Resolution).

Whether using legal or non-legal means to resolve the problem, always know your legal position and your legal options. This improves your bargaining power and gives you a Plan B, if the current option fails.

Keep a record of all communication with your neighbour about the problem and your attempts to solve it. If the matter does end up in a court or tribunal, you will be asked to show your attempts to fix the problem.

For disputes between neighbours in specific types of housing like tenancies, strata title properties, retirement villages, caravan parks and boarding houses, refer to the By-laws, Rules or terms of the relevant occupation agreement. It will contain the rights and responsibilities of neighbours and also methods available for resolving a dispute (see Chapter 27, Housing).

## Dividing fences

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**[32.20]** In NSW, the *Dividing Fences Act 1991* (NSW) (the *Act*) regulates the responsibilities of neighbours regarding their dividing fences and provides remedies to resolve disputes about these fences. The Act does not apply to many public authorities, such as those with control over Crown land, public parks, reserves and roads.

Under the Act, a dividing fence is a fence separating the land of adjoining owners, whether or not it is on a common boundary. It can include structures such as a gate, ditch, cattle grid, hedge, embankment, watercourse, or any foundation or support necessary to maintain or support the fence. It does not include a wall that is part of a house, garage or other building, and it only includes a retaining wall where it is a foundation or support necessary to support and maintain the dividing fence (s 3).

### [32.30] Fencing costs

Nothing in the Act prevents adjoining owners reaching their own agreement as to the sharing of costs. Any agreement needs to be in writing before

any work starts and needs to clearly set out details of the proposed work (see [32.50]).

### Who is responsible for the cost of a dividing fence?

Under the Act, in general, adjoining owners equally share the costs of fencing work to provide a dividing fence of a “sufficient” standard. There are some exceptions, for example where an owner has deliberately or negligently damaged the fence.

### What does “fencing work” cover?

Fencing work includes:

- design;
- construction;
- replacement;
- repair and maintenance of part or all of the dividing fence;
- preparation of the land;
- surveying;
- trimming, lopping and removal of any vegetation along the common boundary;

- planting or replanting a hedge;
- works to a ditch, embankment or watercourse that forms part of the dividing fence (s 3).

If an owner wants to carry out extra work than is necessary for the fencing work, or to provide a fence of more than a “sufficient” standard, that owner is liable for the cost of this extra work (s 7(2), 7(3)). Where the fencing work includes special requirements for the fencing of a pool, the owner of the pool is responsible for the extra costs.

### What is a “sufficient” standard for a dividing fence?

This will depend on the circumstances. Under s 4 of the *Act*, where there is a dispute, the factors the court or tribunal consider include:

- the standard of the existing fence;
- the intended land use on each side of the fence;
- privacy or other concerns of the owners;
- the kind of fence that is usual in that area;
- local council requirements;
- any relevant requirements of environmental planning instruments.

If an owner wants a fence of a higher than sufficient standard, that owner should pay the additional cost, unless the parties agree to some other arrangement.

There may also be certain requirements about the style, height, materials for fences, imposed by local council, heritage provisions or restrictive covenants for particular housing developments. Check with local council for the relevant guidelines. Special requirements will also apply where the fence forms part of a child resistant barrier surrounding a swimming pool.

### If the fence is damaged by an owner

Under s 8 of the *Act*, an owner will have to pay the full cost if the existing dividing fence is damaged or destroyed, either deliberately or negligently, by that owner or someone else who entered the land with their express or implied permission.

If the fence is damaged by a tenant, the owner must pay for the work even if they plan to claim the cost from the tenant.

The dividing fence must be restored to a reasonable standard, considering its state before the damage occurred.

### Urgent repairs

Section 9 of the *Act* allows an owner to make urgent repairs to a dividing fence without contacting the adjoining owner and to recover their contribution later. What is considered urgent depends on the circumstances. For instance, a fence destroyed by fire could be repaired under this provision where livestock are likely to escape.

If the adjoining owner refuses to pay their share, this can be recovered as a debt in the Local Court.

Keep records of the damage and the work done in case it is necessary to take action to recover the adjoining owner’s share of the cost.

### Finding the boundary

If adjoining owners do not agree on the position of the boundary line for the fencing work, s 18 of the *Act* provides the following procedure:

- An adjoining owner gives written notice to the other owner of their intention to have the common boundary line surveyed by a registered surveyor.
  - Within seven days of service of the written notice, the other owner can either mark out with pegs where they think the common boundary line is or engage their own registered surveyor, and inform the adjoining owner.
- If the other owner marks the boundary line with pegs, the adjoining owner can, within one month, have the boundary line surveyed.
- If the registered surveyor finds the boundary line to be the same as the pegs, that owner does not have to share the costs of the surveyor, otherwise
  - The costs of the surveyor are to be shared equally.

For any further dispute about the position of the fence, either owner can apply to the Land and Environment Court for an order (s 14).

### [32.40] Fencing notices

Under the *Act*, to require an adjoining owner to contribute to the cost of fencing work, a notice to carry out fencing work needs to be issued to the adjoining owner. It can be given personally to the owner or sent by post to their last known address (s 11).

The notice needs to be in writing and must include:

- details of the boundary line where the dividing fence will be or, if this line is not practicable, the proposed line for the dividing fence;

- the type of fencing work, for example, a paling or steel fence;
- the estimated cost;
- the proportion of the cost that each owner will pay.

### Locating the owner

If the adjoining owner does not live at the property, a property search at NSW Land Registry Services (LRS) or contacting the local council will provide details of the owner.

Where the adjoining premises are under a commercial lease for an unexpired term of five years or more, the fencing notice may be issued to the leaseholder (s 3).

If the adjoining owner cannot be found after making reasonable inquiries as to their whereabouts, the owner can apply to the Local Court or Tribunal for a fencing order to be issued in their absence (s 17).

### [32.50] Fencing agreements

Any agreement about fencing should be in writing, signed and each party should keep a copy. It should include all relevant details of the location, type of fence, the work involved, cost and design and any additional work specifying who is to pay for that. It should specify the allocation or sharing of costs and also include a time frame for completion of the work.

Under s 15 of the *Act*, if an owner fails within the required time to fulfill the agreement, the other adjoining owner can carry out the work and recover the amount agreed, or, half the cost of the fencing work. If no time frame is specified in the agreement, action can be taken three months after the agreement was made.

The Act considers that substantial compliance with the agreement is sufficient. However, the owner who carries out the work can be liable for any fault or omission in the fencing work (s 16).

### [32.60] Fencing disputes

Where agreement cannot be reached about the fencing work, free and confidential mediation is available from Community Justice Centres throughout NSW to help the parties work through the issues and make an agreement.

If there is no agreement one month after the fencing notice has been served, the aggrieved party can apply to the Local Court or NSW Civil

and Administrative Tribunal (NCAT) for a fencing order to resolve the dispute (s 12). Where a tree is involved, the Land and Environment Court may have jurisdiction to hear the matter.

### [32.70] Fencing orders

Under s 14 of the *Act*, the Local Court or NSW Civil and Administrative Tribunal (NCAT) can make an order that determines any one or more of the following:

- the boundary or line for the fencing work;
- the kind of work to be carried out;
- the way the costs are to be shared or the actual amount that each owner must pay;
- which part of the fence is to be constructed or repaired by which owner;
- the time frame for the work;
- the amount of compensation to be paid to an owner where occupation of any of the land is to be lost;
- that no work is required on all or part of the fence.

An order made involving an amount of money, if not paid, can be pursued as a debt in the Local Court.

Owners must comply with a fencing order within the time specified in the order, or if time is not specified, then within three months of the order. If an owner does not do so, the other owner can proceed with the work and then recover the cost as a debt in the Local Court. Alternatively, an owner can apply to the Tribunal for a renewal of proceedings.

Substantial compliance with the order will be considered sufficient. However, the owner carrying out the fencing work will be liable for any fault or omission in the work (s 16).

In limited circumstances, an owner may be able to ask the Tribunal to have the order changed or set aside, or may be able to appeal the order to the Appeals Panel of the Tribunal.

### Can an owner refuse access for fencing work?

If there is a fencing agreement or order and the provisions of the Act are complied with, an owner (and their workers) can enter the neighbour's land at any reasonable time to carry out the fencing work (s 20). If there is no agreement or order, entering the neighbour's land to do fencing work without permission can be trespass at criminal or

civil law. This applies even where the owner is paying the entire cost for the work.

To enter a neighbour's land to carry out other work, see [32.140].

## Retaining walls

**[32.80]** In NSW, land has a right of support. Under the *Conveyancing Act 1919* (NSW) (the *Act*), there is a duty of care not to do anything on or to the land that removes the support it provides to other land (s 177). An action for negligence can be brought in the Supreme Court where a person breaches this duty.

Under the *Act*, parties can modify or remove this duty of care by express agreement. This agreement can be registered as an easement, and if registered, will bind future owners of the land (s 177).

To avoid costly and protracted litigation in the Supreme Court, it is in the interests of both parties

to properly construct and maintain retaining walls and if a problem arises, negotiate a reasonable solution.

Local council regulations generally apply to retaining walls. Check with council.

An application to the Land and Environment Court under the *Dividing Fences Act 1991* (NSW), for an order concerning the costs of or work to a retaining wall is only available where the retaining wall is a foundation or support necessary for the support and maintenance of a dividing fence (s 3).

## The position of the boundary

**[32.90]** The boundaries of your land will be shown on the deposited plan (DP) held by NSW Land Registry Services (LRS) if the land is Torrens Title, or on the title deeds if the land is Old System.

If there is a dispute about the exact location of the boundary, an owner can have a survey conducted by a registered surveyor and provide the adjoining owner with a copy. Owners can also agree to share the costs.

If the owners still cannot agree, an owner can apply to LRS for a boundary determination under Pt 14A of the *Real Property Act 1900* (NSW).

After an application is lodged together with the relevant documents, any supporting information

and the lodgement fee, notice of the application is given to the adjoining landowner who then has the opportunity to make submissions in reply.

LRS consults a surveyor and often arranges for a survey to be carried out. The applicant pays the costs of the survey.

A decision is made based on all the evidence and, if this does not yield a clear result, it will be what LRS determines to be "just and reasonable" in the circumstances (s 135H).

An appeal of this decision can be made to the Land and Environment Court within 28 days of receiving notice of the decision (s 135J).

For a dispute about the boundary line for the carrying out of dividing fence work, see [32.30].

## Encroachment of buildings

**[32.100]** The *Encroachment of Buildings Act 1922* (NSW) (the *Act*) helps owners resolve a dispute where a building has been built across the boundary. The building must be a "substantial building of permanent character" and includes overhangs or any part of a building below ground or on the ground that crosses the boundary.

Determining the exact boundary can often solve the question of whether a building encroaches onto a neighbour's land. Under the *Act*, either owner can apply to NSW Land Registry Services (LRS) for a boundary determination (see [32.90]) or in certain circumstances, to the Land and Environment Court, to decide the boundary (s 9).

Where a building does encroach, an owner can apply to the Land and Environment Court for an order about the encroachment. It can include:

- compensation;
- transfer or lease of the affected land;
- grant of an interest, such as an easement;
- removal of the encroachment (s 3).

The Court may involve the services of a registered surveyor or valuer and take into account the following factors:

- who made the application;
- the nature and extent of the encroachment;
- the location and value of the land;
- the character and use of the encroaching building;

- any loss and damage that has been incurred or may be incurred by either owner;
- the circumstances of how the encroachment occurred (s 3).

If the encroachment is due to a neighbour's recent extension, local council should be advised. If the council finds that the building is different to the approved plans for the building, it may make an order that the extension be removed or altered to comply with the plans.

A person may also take action under s 123 of the *Environmental Planning and Assessment Act 1979* (NSW) to restrain or remedy a failure to follow a development consent.

## Crossing boundaries and trespass

**[32.110]** The occupier of a property usually has the right to refuse permission to someone to come onto the land. If they refuse to leave when asked, they become a trespasser and reasonable force can be used to remove them.

If greater than reasonable force is used, you may be charged with or sued for assault by the trespasser. A better option is to call the police and ask that they be removed and charged with trespass. If the trespasser has caused damage or injury, they can be sued.

Under the *Inclosed Lands Protection Act 1901* (NSW), where the land is fenced or enclosed, there are various penalties for unlawful entry, re-entry and offensive conduct.

It is not trespass if a person is pushed or falls onto the land.

If an object, like a ball or kite or pet enters the land, there is no implied permission to enter

the land to retrieve it. Express permission must be obtained first, for example by phoning or knocking on the door to ask.

Sometimes a neighbour has a formal right of way to cross over the land, called an easement, created either formally (and recorded on the Certificate of Title) or by long standing custom. The neighbour cannot use the right of way for any other purpose and usually, it can only be extinguished by agreement between both owners.

If the trespass happens repeatedly, despite all efforts to stop it, contact a Community Justice Centre for mediation. The other option of applying for an injunction in the Supreme Court to stop the trespass may be lengthy and costly. Get legal advice first.

## Entry of water

**[32.120]** An occupier may be able to take legal action for compensation if a flow of water is a direct or indirect result of a neighbour's activities and it causes damage.

Examples of a neighbour's action that can lead to damage include:

- a deliberate act like directing a hose onto the land. This may be trespass;

- ongoing activity like construction work that redirects a natural watercourse onto the land. This may be nuisance;
- negligence, for example water flowing onto the land because of the careless construction of a water tank.

Where a neighbour's land or a building on it is being damaged or is likely to be damaged by



the flow of surface water across the land, local council can issue an order to the landowner of the source of the water, to take the necessary action to stop the flow (*Local Government Act 1993* (NSW), s 124).

For access to water and sewerage pipes on a neighbour's land to carry out repairs, it is necessary to ask the owner's permission. If permission is refused, an application for access may be made under the *Access to Neighbouring Land Act 2000* (NSW) (see [32.140]).

### [32.130] Drainage easements

A drainage easement allows water to drain from one property to or over another. Easements are

recorded on the Certificate of Title held at NSW Land Registry Services (LRS).

In certain circumstances, a drainage easement can be granted by a special application to the Supreme Court (*Conveyancing Act 1919* (NSW), s 88K) or to the Land and Environment Court (where there is already an appeal pending about a development consent) (*Land and Environment Court Act 1979* (NSW), s 40).

A drainage easement can be terminated by agreement of both parties. If there is no agreement, it may be possible to have the easement extinguished by special application to the Supreme Court.

Proceedings in the Supreme Court can be lengthy, complex and costly. Get legal advice first.

## Access to neighbouring land

[32.140] Where an owner needs access to a neighbour's land to complete work on their own land and cannot reach agreement with the neighbour, the owner can apply to the Local Court for a Neighbouring Land Access Order or a Utility Services Access Order.

Under the *Access to Neighbouring Land Act 2000* (NSW) (the *Act*), these orders can be made to carry out work such as:

- construction, repair, maintenance, renewal;
- ascertaining the course of sewers, drains, pipes and cables;
- removing, pruning or replacing hedges, trees or shrubs;
- connecting or disconnecting services;
- inspections.

These orders are not available where access to the land is available or prohibited under other legislation. For example, for dividing fence work, see [32.20].

Notice of the application for an order must be given within 21 days to:

- the owner of the affected land;
- any person entitled to the use of the utility service affected;
- any person who may be affected by the order (s 10).

The court will not issue an order unless it is satisfied that the owner can show a reasonable effort has been made to reach agreement with the neighbour (s 11). This may include mediation.

The order can impose conditions on the carrying out of the work. Failure to comply with these conditions can result in a fine and or a payment of damages.

Where possible, the land must be restored to its former state. The owner must also indemnify the neighbour against damage or injury arising from the access.

Appeal of an order to the Land and Environment Court must be made within 30 days of the decision but can only be made where it involves a question of law.

## Trees

[32.150] Most trees in NSW, including those on private residential land, are protected by a range of environmental and planning laws, policies and plans. These measures regulate, restrict or prohibit the removing, lopping or pruning of trees.

If you wish to trim overhanging branches or cut back roots of a neighbour's tree, you may need council approval first. Check with the council beforehand. The neighbour's consent may also be required.

Fines may apply if you proceed without approval and you may be liable in damages to the neighbour if the work damages the tree, for example where its stability is affected.

If a neighbour's tree is causing you problems, contact or notify the neighbour in writing and try to reach agreement on what to do. If this is not feasible, Community Justice Centres offer free mediation for tree disputes. Keep a record of your attempts to reach agreement.

## [32.160] The Trees Act

The main legislation for resolving tree disputes is the *Trees (Disputes Between Neighbours) Act 2006* (NSW) (the *Act*). Although there are some restrictions on the application of the Act, in general it applies where:

- a neighbour's tree is causing or is likely in the near future, to cause damage to property or injury;
- where a neighbour's trees or high hedge is severely obstructing sunlight or the view.

The Act and *Trees (Dispute Between Neighbours) Regulation 2019* defines "tree" to include bamboo, tiger grass/giant clumping grass, vines, shrubs and any plant that resembles a tree. Also, the tree must be on adjoining land.

### Damage to property and injury

Under Pt 2 of the *Act*, an affected owner can apply to the Land and Environment Court for orders to remedy, restrain or prevent damage to the property or injury to any person, caused by the tree (s 9). These include:

- replacement of a tree ordered for removal;
- compensation for any damage to property;
- authorizing entry to the land to carry out the work;
- payment of costs or a share of the costs associated with carrying out the work.

For example, an order might require the trimming, pruning, lopping or removal of a tree or its roots, replacement of a damaged fence or sewer pipes, roofing work.

In deciding cases under this part of the Act, the Court has developed Tree Dispute Principles to help decide whether to grant an order and who should pay. For example, the risk of damage or injury must not be trivial. For another example, where an old but apparently healthy and robust tree fell during a particularly violent storm onto a neighbour's home, the owner of the tree was not held responsible for the damage it caused.

In several cases, the Court has also emphasized that especially in urban environments, the normal dropping of leaves, fruit, flowers, seeds or small amounts of deadwood does not justify an order to interfere with or remove a tree. However, hazards like excessive debris, heavy, damaged or over-extended limbs, deadwood and low branches hitting against a neighbour's roof have justified the granting of an order.

### Obstruction of sunlight or view

Under Pt 2A of the *Act*, an affected landowner can apply to the Land and Environment Court for orders to remedy, restrain or prevent the severe obstruction of:

- sunlight to a window;
- any view from a dwelling on the applicant's land caused by trees or high hedge (s 14D).

This includes orders to:

- maintain the trees at a certain height;
- remove trees;
- replace removed trees with trees of a different species;
- authorize entry onto the land to carry out the work;
- pay the costs or a share of the costs of carrying out the work.

It does not include a payment of compensation.

The obstruction must be caused by more than one tree and must rise more than 2.5 m above ground level (s 14A).

In deciding cases, the Court has applied planning principles, called the Tenacity Principles, to assess the severity and nature of the obstruction.

### Granting an order

The Court will not grant an order under the Act unless it is satisfied that the person applying for the order has:

- given at least 21 days notice of lodgement of the application to the neighbour, to any relevant authorities (such as local council) and any person likely to be affected; and
- made a reasonable effort to reach agreement with the neighbour (ss 10, 14E);
- for orders relating to obstruction of sunlight or view, the Court must also be satisfied that the severity and nature of the obstruction outweighs the undesirability of interfering with the trees (s 14E).

For the hearing, parties may wish to obtain expert evidence from an arborist, engineer or builder, and the Court usually does a site visit.

In deciding a case, the Court must consider all relevant matters including:

- the type and location of the tree(s) to the boundary;
- the impact of any pruning on the tree(s);
- whether the tree(s) have historical, cultural, social or scientific value;
- the tree(s)'s contribution to privacy, landscaping, garden design, heritage values, the local ecosystem and biodiversity, natural landscape and protection from the sun, wind, noise, smells or smoke;

- the tree(s)'s impact on soil stability, water table or other natural features;
- the tree(s) scenic value;
- the neighbour's attempts to prevent or rectify the damage or obstruction;
- any contributing factors.

Failure to comply with an order of the court can result in a heavy fine. Appeal of an order is only available on a question of law.

For tree problems that do not come under the Act, for example if the obstruction of sunlight or view is caused by a single tree or if the tree causing the damage is not on adjoining land, legal action may be more costly and complex. For example, it may require a nuisance action in the Supreme Court. Get legal advice first. Try mediation (see [32.190]).

## Privacy

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**[32.170]** With increased high-density living and greater use of surveillance technology for security, laws have not kept pace with the mounting privacy issues. In NSW, apart from some limited instances, there is no specific right to privacy.

By-laws, rules or terms of a residential tenancy or other residential agreement may contain certain obligations between neighbours concerning privacy and safety.

Under the *Crimes Act 1900* (NSW), it is an offence to peep or pry in or near a building without reasonable excuse (s 547C).

### **[32.180] Invasive CCTV**

It is an offence under the *Crimes Act 1900* (NSW) to use CCTV for sexual arousal or gratification (Div 15B). Call the police.

The *Surveillance Devices Act 2007* (NSW) regulates the installation, use, maintenance and retrieval of surveillance devices. However, under

this Act, it is an offence to record audio without consent but not video (s 7). As well, for video surveillance of your property to be unlawful, it must involve unauthorized entry onto your premises (s 8).

If the neighbouring property is a workplace and the surveillance is of employees, the *Workplace Surveillance Act 2005* (NSW) may apply.

Many local councils require planning approval for the installation of CCTV. Check with your local council.

If the CCTV is on a strata title property, check whether it is contravening any By-laws.

If the surveillance is particularly invasive, it may amount to a nuisance (see [32.190]).

Where you have a problem with your neighbour's surveillance, try talking to them about your concerns. If this is not feasible or successful, you can try mediation using a Community Justice Centre. Planting appropriate vegetation or erecting a screen can also help to block the surveillance.

## Nuisance

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**[32.190]** The law of nuisance comes from case law rather than legislation. It applies where damage is caused by substantial and unreasonable interference with the right to use and enjoy one's land.

For example, it may be available where damage is caused by water unnaturally leaking from a neighbour's land, or by persistent dust, vibration, noise or smells. It is not available in instances

where the *Trees (Disputes Between Neighbours) Act 2006* (NSW) applies.

In NSW, a claim in nuisance is made to the Supreme Court, for an injunction to stop the interference and or for damages. In general, the Court will look at:

- the nature, frequency and extent of the interference;
- whether the interference is ordinarily to be expected in that area;
- whether the interference is caused by an ordinary and reasonable use of the land.

The Court must also be satisfied that:

- the neighbour knew or ought to have known about the interference;
- the interference or damage from it was reasonably foreseeable; and
- the neighbour did not take reasonable steps to prevent it.

There are time limits and a range of other considerations.

An action in nuisance can be complex, technical, slow and very expensive. Get legal advice from an expert in nuisance. Simpler and effective options are to try to reach agreement with the neighbour or arrange mediation.

## Other common problems with neighbours

**[32.200]** Barking dogs, rubbish piled high that attracts flies and rats, parties all night every night, a regular and persistent security alarm, loud music, building work on weekends – these are some of the most common problems faced by neighbours.

Whether your neighbour is the owner, a tenant or a commercial enterprise, a variety of laws exist to protect the quiet enjoyment of your property. Apart from local council regulations, the main legislation is:

- *Local Government Act 1993* (NSW);
- *Protection of the Environment Operations Act 1997* (NSW);
- *Protection of the Environment Operations (Noise Control) Regulation 2017* (NSW);
- *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW);
- *Protection of the Environment (Waste) Regulation 2014* (NSW);
- *Boarding Houses Act 2012* (NSW);
- *Companion Animals Act 1998* (NSW).

### **[32.210] Talk to your neighbour**

Where a problem arises, if possible, first talk to your neighbour, explaining the problem, how it is affecting you and ask that it stop or change or be limited to certain times.

If you don't feel comfortable approaching your neighbour or your attempts are unsuccessful, Community Justice Centres can help by arranging a free and confidential mediation.

If the problem is causing an immediate threat to health or property, for example toxic fumes, or if

the neighbour is threatening or intimidating you, call the Police.

Where the owner is not living at the property and you wish to discuss the problem with them but don't know how to contact them, try local council for the owner's details or do a property search at NSW Land Registry Services (LRS).

Keep a detailed record of the problem (for instance dates, times and duration) as well as your contact with the neighbour and your attempts to resolve the problem. These records will be useful, should you need to contact police or other authorities or pursue remedies at a court or tribunal.

### **[32.220] Contact police, local council or the relevant authority**

For the contact details of the various relevant authorities mentioned below, see [32.230].

#### **Water**

For pollution of waterways, contact the NSW Environment Protection Authority (EPA) or local council. A range of notices can be issued and hefty fines can apply.

#### **Air**

For smoke and smells from residential premises, small business or food outlet, including domestic wood fires, backyard burning and animal smells, contact local council. A smoke abatement notice can be issued to the occupier of the premises.

For smoky vehicles, smells or smoke from landfill or sewerage and treatment works or large industry, including premises with an Environmental Protection Licence, contact the EPA. Heavy penalties can apply to non-residential premises that emit air pollution.

## Noise

For noise from residential premises, including barking dogs, power tools, air conditioners, pool pumps, loud parties, music, a neighbour's noisy car, noise from a small factory or backyard workshop, contact local council or Police Assistance Line 131 444.

For noise from large industry, contact the EPA. For noise from building construction, contact local council or the EPA. Where the noise is from traffic and road construction, depending on the type of road, contact local council, EPA or Roads and Maritime Services.

The law imposes various restrictions on the allowable times for a wide range of noises in the neighbourhood. Police or other authorized officers can issue a warning or verbal or written noise abatement direction. Local council can issue a prevention notice. You can also apply, yourself, to the Local Court for a noise abatement order.

## Rubbish

For problems with domestic and local roadside dumping, contact local council. For other illegal dumping, contact local council, the EPA, police or Crimestoppers. Fines can apply.

Under s 124 of the *Local Government Act 1993* (NSW), council may remove or dispose of waste on premises where it is likely to cause a threat to a person's health or to public health. If premises are not in a safe and healthy condition, local council can also issue an order that the premises be cleaned up.

## Overcrowding

Overcrowding in a neighbouring property can lead to noise and public health issues for neighbours. Apart from specific remedies for excessive noise

and rubbish outlined above, the *Boarding Houses Act 2012* (NSW) (the Act) might apply.

Under the Act, a boarding house must be registered and is subject to particular standards, occupancy principles and can attract inspections from local council.

The Act applies to premises where beds are provided for a fee or reward, for use by five or more residents (excluding the owner or manager). It does not apply to many types of accommodation such as hotels, motels, B&Bs, backpacker hostels, workers' accommodation, care facilities, crisis accommodation and tenancies under the *Residential Tenancies Act 2010* (NSW).

If next door seems full to the brim with a high turnover of residents, it may need to be registered as a boarding house. Keep accurate records of the comings and goings, check the online Boarding House Register and contact the local council.

## Problem animals

For problems with a neighbour's animals, contact local council. Remedies outlined above are available for noise and smells and garbage associated with problem animals.

In addition, the *Companion Animals Act 1998* (NSW) (the Act) and *Companion Animals Regulation 2018* (NSW) imposes responsibilities on pet owners and gives local council powers to issue orders and impose penalties. For example, an owner must take all reasonable precautions to prevent a dog escaping from the property where it is kept (s 12A).

Under the Act, local council can issue a dog nuisance order or cat nuisance order.

For dog attacks, local council can seize and secure the animal, and the Local Court can issue a control order, an order that the dog be declared dangerous or menacing or an order that the dog be seized and destroyed.

Where an inappropriate kind or number of animals is kept at a property, council may issue an order restricting the kind or number (*Local Government Act 1993* (NSW), s 124).

# Contact points

**[32.230]** If you have a hearing or speech impairment and/or you use a TTY, you can ring any number through the National Relay Service by phoning **133 677** (TTY users, chargeable calls) or **1800 555 677** (TTY users, to call an 1800 number) or **1300 555 727** (Speak and Listen, chargeable calls) or **1800 555 727** (Speak and Listen, to call an 1800 number). For more information, see [www.communications.gov.au](http://www.communications.gov.au).

Non-English speakers can contact the Translating and Interpreting Service (TIS National) on **131 450** to use an interpreter over the telephone to ring any number. For more information or to book an interpreter online, see [www.tisnational.gov.au](http://www.tisnational.gov.au).

Changes are expected to the websites for many NSW government departments that were not available at the time of printing. See [www.service.nsw.gov.au](http://www.service.nsw.gov.au) for further details.

## Community

### Community Justice Centres

[www.cjc.justice.nsw.gov.au](http://www.cjc.justice.nsw.gov.au)  
ph: 1800 990 777

### Community Legal Centres

[www.clcsw.org.au](http://www.clcsw.org.au)  
ph: 02 9212 7333

### Environmental Defenders Office (EDO)

[www.edonsw.org.au](http://www.edonsw.org.au)  
ph: 1800 626 239 or (02) 9262 6989

### Law Access NSW

[www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)  
ph: 1300 888 529

### Find Legal Answers (State Library of NSW)

[www.legalanswers.sl.nsw.gov.au](http://www.legalanswers.sl.nsw.gov.au)

### Law and Justice Foundation of NSW

[www.lawfoundation.net.au](http://www.lawfoundation.net.au)  
ph: (02) 8227 3200

## Courts and Tribunals

### Land and Environment Court

[www.lec.justice.nsw.gov.au](http://www.lec.justice.nsw.gov.au)  
ph: (02) 9113 8200

### Local Court

[www.localcourt.justice.nsw.gov.au](http://www.localcourt.justice.nsw.gov.au)

### NSW Civil and Administrative Tribunal (NCAT)

[www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)  
ph: 1300 006 228 for Consumer and Commercial Division, press 1

### Supreme Court of NSW

[www.supremecourt.justice.nsw.gov.au](http://www.supremecourt.justice.nsw.gov.au)  
ph: 1300 679 272

## NSW Government

### Department of Communities and Justice

[www.justice.nsw.gov.au](http://www.justice.nsw.gov.au)  
ph: (02) 8688 7777

### Department of Planning, Industry and the Environment

[www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)  
ph: 1300 305 695  
for planning information about a property:  
[www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au)  
Environment Protection Authority (EPA)  
[www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)  
ph: 131 555 or (02) 9995 5555

### Land Registry Services (LRS)

[www.nswlrs.com.au](http://www.nswlrs.com.au)  
ph: 1300 052 637

### NSW Legislation and Cases

[www.austlii.edu.au](http://www.austlii.edu.au)  
[www.caselaw.nsw.gov.au](http://www.caselaw.nsw.gov.au)  
[www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

### Police

[www.police.nsw.gov.au](http://www.police.nsw.gov.au)  
All emergencies ph: 000  
Police Assistance Line (non emergency) ph: 131 444  
Crime Stoppers ph: 1800 333 000