

Town of East Fremantle

Information Guide for Owners / Occupiers Overhanging Trees and Roots



(Note- this it not a Council Policy)
Last reviewed 15/10/2010

The following information is taken from

1. **Legal Aid web site: go to –**
<http://www.legalaid.wa.gov.au/InformationAboutTheLaw/Homes/neighbours/Pages/Dividingfences.aspx>
2. **The Dividing Fences Act 1960: go to -**
<http://www.buildingcommission.wa.gov.au/industry/legislative-framework/dividing-fences-act-1961>

Extract from the Legal Aid

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
- not poison the neighbour's tree or any roots that are on your property
- take care not to 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 any one else's permission?

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

What should I do with the cuttings?

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. 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 the roots or branches, write a letter to your neighbour

- 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.

You should keep a copy of the letter.

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?

There are mediation services 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. Where possible, think about negotiating an agreement, or going to a dispute resolution service instead of taking court action.

For more information about neighbourhood dispute resolution visit <http://www.legalaid.wa.gov.au/InformationAboutTheLaw/legalproblem/Disputeresolution/Pages/Default.aspx> or check your local telephone directory.

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.

Extract from The Dividing Fences Act 1961

Tree debris, encroaching roots and overhanging branches

Trees are a highly desirable part of our landscape and essential to our environment so a certain amount of inconvenience associated with them should be tolerated. Information on your rights about tree nuisance is available online at: www.legalaid.wa.gov.au/InfoAboutLaw.

You should be aware that these issues are not covered under the Act. Only where a dividing fence has been destroyed in whole or in part by the falling of a tree does the Act provide for the adjoining owner to repair the fence immediately and recover the costs in the Magistrates Court.

Under Schedule 3.1 of the *Local Government Act 1995*, your local government may serve a notice on owners of land to ensure that a tree on that land that endangers any person or thing on adjoining land is made safe. Contact your local government authority for more information.

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