

ENCROACHING TREES

INFFAQ 1 V1.1

INFORMATION SHEET



1. Who does a tree belong to?

Under Common Law, a tree belongs to the land on which it is growing regardless of how it got there and is the property of the land owner.

2. What can I do if a root or a branch encroaches upon my land?

You are entitled to cut and remove the offending branch or root at any point up to the boundary of your land. You must not cut the branch or root on your neighbour's side of the boundary without his/her agreement. You are also not entitled to enter the neighbouring land to do this.

3. Can I enter into my neighbour's property to cut down a branch or root?

No. You are not entitled to enter your neighbour's property at all.

4. Who is responsible for keeping trees under control?

It is the property owner's responsibility to inspect their trees regularly & ensure that they are in a safe condition, being mindful that trees are living organisms & their condition may change over time.

5. Obstruction of sunlight

Under Common Law, the occupier of the property is only entitled to light which falls vertically.

6. What powers do Local Government authorities have?

The Local Government Act empowers Local Government Authorities to take action to ensure any tree that endangers a person or property on adjoining land is made safe. This power is generally only exercised in a situation where a tree presents an imminent danger and a property owner has refused to take appropriate action to render the tree safe. If the tree is a nuisance but does not present a hazard, the Town will not take action in relation to the tree. Residents are encouraged to resolve this issue amicably by negotiating with their neighbours.

7. What process should I follow?

The Town recommends that you should carry out the procedures listed below before the Town could consider intervening:

- Approach the owner of the tree and attempt to arrive at an amicable solution to the

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matter of concerns.

- If the above does not resolve the issue a written request must be supplied to the tree owner requesting the required work to be undertaken on their tree. Ensure that you keep a copy of this letter.
- If this does not resolve the issue, obtain a report from a qualified Arboricultural Consultant. This will determine if the tree is structurally sound or represents a potential danger. Supply the owner of the tree with a copy of this report with a further request to carry out the required work.
- If the Consultant finds the tree to be unsound and warrants pruning or removal the Town may become involved if the tree owner does not carry out the obligation on their part to remove or prune the tree and the complainant cannot resolve the issue himself or herself.

If it is open to the Council of the Town to form the view that the tree endangers any person or thing on adjoining land and is required to be made safe then the Town may elect to issue a notice under s3.25 of the Local Govt Act 1995 which sets in train certain procedures which hopefully will eventually achieve compliance. If compliance is not given then it may be necessary for the Town to initiate a prosecution in the Court of Petty Sessions to achieve the desired outcome.

The Town advises that this is a private matter and may only commence involvement once it is satisfied that the tree does present a hazard & that the property or occupier has failed to take appropriate action to remove the hazard.

8. If my neighbour does not wish to compromise, what can I do?

If mediation with neighbours becomes necessary, residents may wish to contact the Citizens Advise Bureau on 9221 5711 who can facilitate appropriate mediation sessions for the general public.

9. Where do I go to seek further advice?

Residents wishing to seek further advice may contact either Legal Aid WA through their information line on 1300 650 579 or the Dept of Housing & Works regarding fences & trees on 9440 2290. You can also obtain a pamphlet entitled Encroaching Roots & Branches which has been published by Legal Aid WA.