



CIVIL ISSUES

The purpose of this guide is to assist property owners who are in dispute, by clarifying the responsibilities and courses of action available in situations where the Council is not responsible for resolving or enforcing civil issues.

Council is a relevant authority in the processing of Development Applications and enforcing offences in the course of development being undertaken. However, Council is not an authority in the case of civil disputes. This guide will help you understand you and your neighbour's rights and responsibilities in relation to activities that do not constitute development, various issues that may arise and where to get help in determining a dispute.

Trees

If the branch or root of a tree comes over the boundary, the affected neighbour has the right to cut it off at the boundary at his or her own cost. The neighbour does not have the right to come onto the tree owner's land and cannot remove any part of the root or branch that is not on his or her property.

Any severed branches and roots remain the property of the tree owner and should be returned to him or her, taking care not to cause any damage.

If the intruding roots or branches have caused damage to property (for example, roots cracking pipes or branches damaging gutters), a neighbour can also apply for a Magistrates Court order that the tree owner remove the root or branch or in some circumstances the whole tree. The tree owner can also be made to pay the cost of repairs or compensation.

Without a Council or Court order, the neighbour will normally have to pay the cost of cutting back the tree unless the owner agrees to contribute. However, where the tree has caused some damage and it is necessary to cut back the tree to prevent further damage it may be possible to claim the cost against the tree owner.

Negligence is the form of legal action for damage caused to a neighbour's property by branches falling over the boundary. For a tree owner to be responsible under the laws of negligence, it would be necessary to show that he or she knew or should have known that the branch was dangerous and that it may cause damage.

To prove this, a neighbour would probably need to show that the danger had previously been drawn to the owners' attention (possibly supported by an expert opinion), and that the tree owner had then failed to do something about it.

The owner of the tree may be responsible for damage caused by leaves, nuts, or twigs from overhanging branches, but not if they are carried over the boundary by the wind.

Fences and retaining walls

If you alter the natural lie of your land by excavating or filling so that there is a risk of earth moving from your property onto your neighbours' property or from your neighbours' property onto yours (ie. if soil is excavated or filled greater than 200mm), you may be required to give the neighbour prior notification and, if necessary, build a retaining wall to retain the soil. The responsibility for maintaining the wall will pass on to future owners of your property. If both you and your neighbour alter your properties in this way, you will each be responsible for the cost of a wall in proportion to the change that each has caused.

According to the Development Act 1993, development approval is required by you or your neighbour when:

- Constructing a fence exceeding 2.1 metres in height (measured from the lower of the two adjoining ground levels);
- Constructing a masonry fence that exceeds (or would exceed) one metre in height (measured from the lower of the two adjoining finished ground levels); and
- Constructing a retaining wall which retains a difference in ground levels exceeding one metre.

For further information refer to "Fences and the Law" brochure available at the Council Office.

Boundaries and encroachments

Sometimes, buildings and driveways are incorrectly built on a neighbour's land. If there is an encroachment dispute, the Supreme Court has the power to order the removal of the structure, to order changes in the titles to the land, or to order compensation.

A wall of a building on the boundary is not a fence and belongs solely to the building owner. That owners permission should be obtained before doing any work on the wall.

Water

You may be responsible for any damage caused by the artificially concentrated flow of water from your property onto your neighbour's land. This may result from leaks or taps left running, the channelling of rainfall in drains

or pipes, or from the concreting of large areas causing rainfall to run off in greater volumes than is natural.

Strata and community titles

If you live in a strata or community title property, your rights may be restricted. Think very carefully about the mutual obligations involved in communal living before you buy or rent a strata title or community title property. Unless most of the owners agree with you on an issue, you may find your right to enjoy the property will be restricted.

Want to know more?

The above information is a guide to the law and is not a substitute for legal advice. It is not intended that any person should prefer to rely on the law as stated in this guide rather than choose to consult a lawyer. While care has been taken to ensure the accuracy of material contained in this publication, no responsibility will be accepted for any errors or omissions.

Legal Services Commission of South Australia – Contact details

159 Gawler Place, Adelaide 5000
Telephone 8111 5555
Facsimile 8111 55 99
Telephone advice line 1300 366 424
Website <http://www.lsc.sa.gov.au>

Southern Community Justice Centre – Contact details

Head Office: 40 Beach Road, Christies Beach 5165
Telephone 1300 850 650

Victor Harbor Outreach:

Victor Harbor Council Office
1 Bay Road
Appointments or enquires call 8384 5222 (advice only)

Community Mediation Services - Contact details

Information & Advice – Ph: 8384 5222

City of Victor Harbor – Contact details

1 Bay Road
PO Box 11, Victor Harbor SA 5211
Telephone: (08) 8551 0500
Facsimile: (08) 8551 0501
Email: localgov@victor.sa.gov.au
Website: www.victor.sa.gov.au