

Water run-off: How to resolve disputes with neighbours



Relevant Law

Water run-off disputes between neighbours in Queensland are governed by the common law and relevant state and federal legislation, such as the *Environmental Protection Act 1994* (Qld), the *Water Act 2007* (Cth) and the *Planning Act 2016* (Qld).

Heavy flooding and rainfall can often cause water run off disputes between neighbours. This factsheet will discuss how to resolve disputes of this nature with neighbours.

Step 1: Contact your neighbour and raise your concerns

Firstly, try talking to your neighbour or writing to them. Let them know what issues you are having with the water from their property and how it is affecting you. Calmly explain that you would like to work with them to find a solution. Often the easiest and least costly resolution to most water run off problems is for you to either dig or have someone (usually a landscaper) dig for you a simple earth drain along your boundary where the run off can be easily re directed out onto a footpath or roadway or into an existing drain.

Another aspect which should be remembered is that often the problem is not your immediate neighbour but may well be someone much further up. Discussing the problem with your immediate neighbour may disclose that they are not the problem. This is particularly an issue where your property is at the bottom or close to the bottom of a hill.

Neighbour disputes can be frustrating but try to keep all communication civil and constructive: nobody wants to end up in court (and living next to the other party).

Please note that if your property is part of a strata scheme, the strata management group may be able to assist.

Step 2: Contact your local council (eg Brisbane City Council)

Your local council may be able to assist if the run-off is caused by illegal or incorrectly constructed buildings or structures. If some construction on your neighbour's property is deficient or unauthorised, the council could penalise your neighbour if works are not removed or brought up to standard. This may resolve your issue without you needing to pursue it any further.

However, if the water flow is a result of the natural fall of the land, this is a civil matter and the council cannot intervene.

Step 3: Try dispute resolution

If negotiating a solution directly is not successful, consider inviting your neighbour to try mediation. Mediation is a process in which a neutral third party helps the parties to find a mutually acceptable agreement. Different forms of mediation are available and can be tailored to suit the dispute and the parties involved. Some mediations occurs in person (either together or in separate rooms) while some are done over the phone or via virtual means such as Skye or Microsoft teams.

There are free dispute resolution services available, try South Queensland Dispute Resolution Centre (07) 3738 7000 or our mediation service: (07) 3162 3282. Private companies also offer mediation on a fee-for-service basis.

Step 4: Explore legal options

Water naturally runs downhill and normally a person is not responsible for water running onto a neighbour's land. However, if an uphill neighbour has changed the lie of the land or done anything to concentrate the flow or alter the direction of water and that water is affecting your property, you may have legal recourse if necessary.

Nuisance

If your uphill neighbour has changed the levels or shapes of the land so that the flow of water to your block has increased at a particular point, you may have an action in nuisance. This means that you could take them to court and seek:

- Damages, which is an amount of money to compensate you for the negative effects on your property; and/or
- An injunction, which is an order of the court, for example that the neighbour conduct works to correct the run-off from their land.

To succeed in nuisance, you will need to be able to show that:

- the run-off has caused material damage to your property, or interfered with your reasonable use and enjoyment of the land; and
- the neighbour's changes to the land/buildings caused the run-off.

If the extra run-off is the result of 'natural' use of the land, and any changes are reasonable and proper, there is not likely grounds for a nuisance action. For example, while building a pool in a backyard is a natural use of the land for a residential block, building it in a way that diverts and concentrates water flow onto a neighbour's block is not reasonable or proper, particularly if there are other options available that would not cause any harm to the downhill neighbour.

Negligence

Neighbours have a duty to take care to ensure that their activities do not cause harm to their neighbours' properties. This includes taking reasonable steps to manage water run-off.

To succeed in an action in negligence, you must be able to show that:

- Your neighbour had a duty of care to you. This is usually satisfied by the proximity of your land to theirs: a reasonable person could foresee that any changes they make to their land could affect your property;
- Your neighbour breached that duty of care by altering their land so that run-off to your property was created or exacerbated; and
- Your property was damaged by the water run-off.

To succeed in a legal dispute over water run-off, it is important to have evidence of the harm caused by your neighbour's runoff and the steps you have taken to resolve the issue. This may include photographs, videos, reports and witness statements. The remedy for negligence is damages: enough money to put you in the same position as though the breach of duty never occurred, but no more.

Actions in tort (civil wrongs) such as nuisance and negligence must be brought to court within six years of the cause arising (ie the run-off occurring).

Trespass to land

If your neighbour has intentionally redirected the water in order to physically interfere with your land, you may be able to bring a trespass action against them. This is, however, a more difficult action to successfully litigate as you will need to establish the element of intention.

Final Comments

In conclusion, water run-off is a common problem in high rainfall, storm-prone areas such as South-east Queensland. It is always advisable to try to resolve the issue amicably with your neighbours if possible. Mediation can be a useful process to help parties find a compromise.

As a last resort, legal remedies are available, although this is costly, stressful and entrenches the conflict with your neighbour. For a matter to proceed all the way to a court hearing inevitably involves many thousands of dollars in legal costs together with usually very expensive engineers and other professional costs for reports and surveys. Further, court outcomes are far from certain. If you are unsuccessful, you run the risk of very substantial costs being awarded against you as well as having to bear your own costs. If you are successful in court, you may be awarded damages to compensate you and perhaps an order that the neighbour stop allowing run-off to interfere with your land. We recommend that you seek specific legal advice before launching any court action.

Bayside Community Legal Service acknowledges the traditional owners of the lands across Queensland, and in particular the Quandamooka peoples, the traditional owners of this land where our Bayside community is situated. We pay our respect to Elders past, present and emerging.

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