



# Trees and the Law



Legal Services Commission  
OF SOUTH AUSTRALIA





## Trees and the Law

Produced by the Legal Services Commission.

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In our gardens, trees can provide us with shade, fruit, privacy and a pleasant outlook. Yet trees can sometimes become the cause of disagreement between neighbours. Trees can be seen as competing for space, water and sunlight, and can sometimes be responsible for inconvenience and damage.

The purpose of this booklet is to outline the law relating to tree problems between private neighbours and to suggest some practical ways in which problems may be avoided.

This booklet does not deal with problems associated with trees growing on public land or overhanging on to public areas. In general, whether or not a local council has planted a tree on a road, they cannot be made liable for any damage resulting from the tree's location or growth (*Local Government Act 1999*, s 245(1)).

However, if the owner or occupier of property adjacent to the road has made a written request to the council to take reasonable action to avert a risk of damage from the tree and the council has failed to take reasonable action in response to the request, the council may be liable for any damage to property that would have been averted if the council had taken reasonable action when requested. Specific legal advice should be sought in these situations.

The legal control and protection of various tree species in rural, hills and reserve areas is also beyond the scope of this booklet. The *Native Vegetation Act 1991*, and the *National Parks and Wildlife Act 1972* may be relevant in these contexts.

The most common tree problems between neighbours include overhanging branches, tree litter, shading and intruding roots. The responsibilities of the tree owner and the rights of the affected neighbour in these situations are mainly covered by the common law about liability for nuisance and negligence.

A helpful approach to tree problems between neighbours is to ask these questions:

1. Is the tree really the problem? (p. 3)
2. Is the tree owner legally responsible? (p. 3)
3. What can the affected neighbour do? (p. 6)
4. Is the tree protected? (p. 12)
5. How can future problems be avoided? (p. 14).

## Is the tree really the problem?

To establish that the tree owner is legally responsible an affected neighbour must first show that it is more likely than not that a particular tree or trees is the cause of the problem. While it is easy to show that a branch is overhanging the boundary, it can be difficult to prove root damage.

Damage to buildings, walls, drains and paving may or may not be partly due to root action. Seasonal changes in soil moisture levels may be a major factor. Identifying the problem tree or trees may also be difficult where several trees are growing in the area. Remember that roots from some trees can travel a long way from the base of the tree.

Roots can be identified as coming from a particular tree by trenching the site, but this may cause great inconvenience and expense, particularly if the area is concreted or built over. Laboratory tests can identify trees from a fresh, woody root sample more than 5 mm in diameter (see Root Sample Testing, page 16).

## Is the tree owner legally responsible?

If a particular tree can be identified as the source of the problem, the tree's owner may be liable (legally responsible) depending on where the tree is growing. The tree owner is the person who owns the land on which the tree is growing (or from which it has grown) because the tree is legally considered to be part of the land as a 'fixture'.

Several different situations are possible:

### ***(a) Tree located entirely on the tree owner's land***

In most cases there will be no liability at all for problems caused by a tree which is located entirely on the tree owner's side of the boundary (including the roots). There is no general right to sunlight or to a pleasant or unimpeded outlook (unless, in rare circumstances, there is an easement protecting such a right). Therefore there can be no liability for shading, unsightliness, or the blocking of a view by a tree which remains entirely on another person's land.

### ***(b) Branches or leaves falling over the boundary***

If a tree grows entirely on the tree owner's side of the boundary, but parts of it fall by natural means on to the other side, the tree owner may be liable in negligence. The affected neighbour would need to prove that actual loss or damage had resulted from the tree owner's failure to take adequate precautions. What is considered adequate is determined by asking how

a 'reasonable' tree owner would have assessed the situation and what they would have done about it. If, for example, the branch of a tree breaks off and falls into a neighbouring property causing damage, the tree owner would not be liable unless they failed to take reasonable care of the tree or failed to fix what an ordinary reasonable landowner would have recognised as a significant problem.<sup>1</sup> Compensation (called 'damages') is the usual remedy if negligence is proved.

A neighbour who is aware that a tree near the boundary is in a dangerous condition, or belongs to a species which is known to drop branches, should draw this to the tree owner's attention in writing and keep a copy of the letter. If damage occurs later, this will assist to establish that the tree owner was aware of the problem and failed to take reasonable and appropriate precautions.

If, however, a strong, healthy tree blows down across the fence in a storm, this is considered to be an 'act of God' for which there is no liability.<sup>2</sup> Nor is there liability for leaves, needles, nuts or twigs which are blown into the neighbour's property by the wind<sup>3</sup> unless, perhaps, they were known to be highly toxic and attractive to animals or children.<sup>4</sup>

If the tree owner cuts off branches or picks up leaves and throws them over the boundary the affected neighbour may bring an action for trespass. A trespass generally involves a deliberate, invasive breach of security without permission. It is not necessary (as it is with an action for negligence) to prove that any actual damage or loss resulted from the trespass. Special additional damages may also be given as a warning to others.

### *(c) Trees intruding on to the neighbour's side*

Tree branches and roots growing over the boundary are not 'trespassing' in the legal sense.<sup>5</sup> They are legally a 'nuisance'.<sup>6</sup> A tree which remains entirely on the owner's side of the boundary cannot, technically, be a nuisance.<sup>7</sup>

The law of nuisance is essentially about balancing interests in cases of conflicting land use. A nuisance is an unreasonable and substantial interference with the neighbouring owner's use and enjoyment of their land. (Apart from trees, other examples of nuisance are noise, dust, smoke, flooding, pollution etc.) Where a nuisance situation is found to exist, the law may provide several remedies, depending on whether actual damage or loss has occurred or is likely to occur. In most cases the main legal remedy for projecting branches and penetrating roots is the right to cut them off at the boundary.

Generally speaking it is the tree owner who is liable for a nuisance situation. But liability will usually depend on whether the tree owner was aware or should have been aware of the nuisance situation which created a risk of damage to the neighbour.

### **Trees planted by current owner or tenant**

An owner of land who plants a tree which becomes a nuisance may be liable for any reasonably foreseeable damage which results from that nuisance. Liability may also be incurred if a gardener or other person for whom the owner is responsible plants the tree, unless this is beyond the scope of their employment or instructions and is not brought to the owner's attention.<sup>8</sup>

A tenant or other person who plants a tree without the owner's knowledge may become liable instead of, or as well as the owner, depending on whether the owner should have become aware of the problem before the damage happened.

### **Trees planted by previous owner**

A person who acquires a property with a nuisance tree already growing on it will only be liable for damage occurring after they became aware or could be presumed to be aware of the problem and failed to correct it.<sup>9</sup> The new owner becomes liable if he or she continues or adopts the nuisance. They will be presumed to be aware of a problem if in the circumstances of the case they could reasonably be

expected to be aware of it. It may be presumed, for example, that tree owners should be aware that tree roots, which cannot usually be seen, can travel some distance and cause damage to buildings.<sup>10</sup>

If tree owners knew or ought to have known of a nuisance situation, they will be liable for failure to take reasonable precautions to prevent damage, if they had a reasonable opportunity to do so. Precautions need only be taken where there is a reasonably foreseeable risk of damage, that is, a real and not merely theoretical risk which a reasonable person would have considered necessary to remove.

What amounts to a reasonable precaution will depend on a comparison between the cost and inconvenience of the work involved with the likely cost and inconvenience of the damage which might occur if adequate precautions were not taken.<sup>11</sup> Liability will not be imposed in cases where the cost of precautionary measures is prohibitive when compared with the risk of damage occurring.<sup>12</sup> Tree owners who become aware of potential problems which neighbours may have with their trees should seek advice from a tree specialist.



A tree owner is unable to avoid liability on the basis that the neighbouring owner bought their property next to the tree or built too near it.<sup>13</sup> In some circumstances, however, this will affect the nature of court orders obtained or the amount of compensation awarded. It is also no answer to a tree nuisance claim that the tree was self-sown<sup>14</sup> or posed an insubstantial or not unreasonable interference.<sup>15</sup>

#### ***(d) Trees on the boundary***

If a tree appears to be growing right on the boundary, it legally belongs to the owner of the land where it was first sown or planted. Where this is not known, the tree is normally regarded as being jointly owned by the adjoining landholders.<sup>16</sup> In such cases, there is no right to cut the trunk at the boundary, because this would kill the tree and destroy the adjoining owner's interest in it. Both owners will have to agree on how to deal with it.

#### ***(e) Problems caused by land owner's trees***

People obviously cannot claim against neighbours for problems caused by their own tree unless it can be shown that the neighbour has interfered with the tree so as to create the problem. Such interference, especially by poisoning, can be very difficult and costly to prove. Deliberate interference may result in liability for trespass or even criminal damage, while careless interference may result in liability for negligence.

## **What can the affected neighbour do?**

However annoying the problem with a tree, it is important for an affected neighbour to keep it in perspective. In most cases there are a range of possible solutions. But if the tree owner and the affected neighbour are to continue to live next door to each other, it is best to approach the problem in such a way as to avoid any unnecessary harm to the relationship. Honest discussion of the situation with the aim of negotiating a mutually beneficial solution is the best approach, regardless of whether the tree owner is legally responsible for the problem.

If the affected neighbour is a tenant, the landlord should be informed of the problem, but the tenant has the right to pursue any of the following strategies.

### **The parties discuss the problem**

It is sensible to think carefully about exactly what you want before raising a problem with a neighbour. A good start is simply to arrange a convenient time to talk about the tree. It is obviously not a good idea to commence discussions 'in the heat of the moment' after first becoming aware of the problem.

People should explain the problem as clearly and openly as possible in terms of how they are affected and not in terms of how the other party is to blame. If both parties are able to do this, and listen to each other enough to understand what



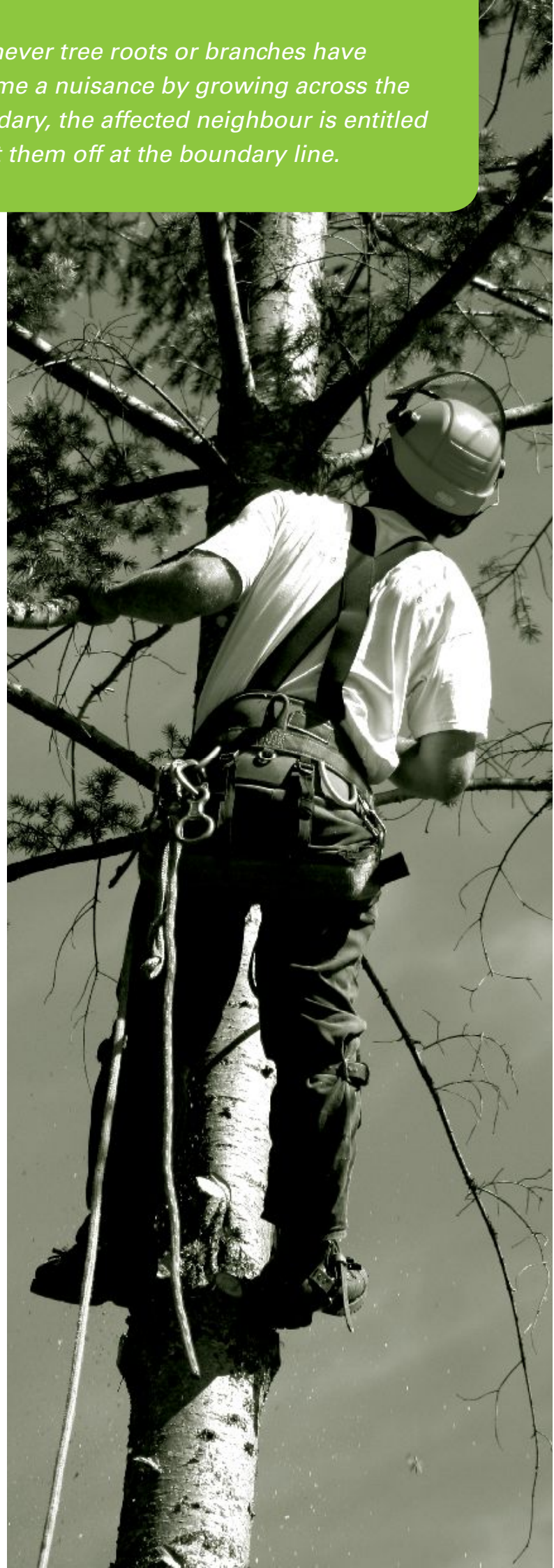
*Whenever tree roots or branches have become a nuisance by growing across the boundary, the affected neighbour is entitled to cut them off at the boundary line.*

they each need, the chances of agreement are much higher. People who experience (or expect) real difficulty in talking to their neighbour should contact a Community Mediation Service for help. These services can provide independent and neutral mediators to conduct meetings between neighbours (See 'Where To Get Help', page 16).

### **Affected neighbour removes the nuisance**

Whenever tree roots or branches have become a nuisance by growing across the boundary, the affected neighbour is entitled to cut them off at the boundary line.<sup>17</sup> This is called the right of 'abatement'. It is a self-help remedy - taking practical action to remove the nuisance. It does not arise until there is a nuisance.

There is no right to take precautionary action such as lopping branches which may in future grow over the boundary unless they are lopped. Pruning the tree inside the owner's property without permission is a trespass, for which exemplary damages may be awarded by a court in addition to compensation.<sup>18</sup> Prior notice to the tree owner is only legally required if it is necessary to go on to their land to do the work or permission is to be sought for cutting over the boundary.<sup>19</sup> In any case, it is normally good neighbourly practice to let the tree owner know before cutting back major branches or roots.



A person cutting back their neighbour's tree is obliged to exercise reasonable care and skill in carrying out the work. If unnecessary damage is caused to the tree they may be found liable to pay compensation to the tree owner. Branches should be cleanly cut with a sharp saw or other appropriate implement so that healing is not impeded. Roots which have been cut back should not be treated with retardants or poisons. If roots are cut in such a way as to destabilise the tree, and it later falls over, there may be liability in negligence for any damage caused.

Any severed roots or branches remain the property of the tree owner.<sup>20</sup> The neighbour may not burn, sell or otherwise dispose of the wood or cuttings without permission. Although there is no positive legal duty to return them,<sup>21</sup> the best course is to place them on or outside the tree owner's property (preferably as agreed beforehand) taking care not to cause any further damage in doing so. The local council should be consulted before cuttings are deposited on nature strips, which are council property, in case the tree owner delays in collecting them.

As a general rule, the neighbour is not entitled to recover the costs of cutting back the tree from its owner.<sup>22</sup> In cases where overhanging branches are high off the ground, the assistance of professional tree loppers may be required to remove them safely. If the cost is likely to be expensive, the tree owner should be asked to contribute. A Community Mediation Service may be able to help in this situation. If no agreement can be reached, an alternative might be to seek a court order that the work be done at the tree owner's expense (see below).

A neighbour may be able to recover the cost of cutting back the tree if damage is imminent or already occurring to their property because of a nuisance situation. Affected neighbours are obliged to take reasonable precautions to minimise the extent of the damage that they suffer. This may involve some minor pruning or similar work. Provided that it is necessary to minimise actual damage, and it is not undertaken as a longer-term precaution, the costs of this work may be recovered from the tree owner.<sup>23</sup> It may of course be difficult to prove at a later date that the work was necessary.

A neighbour cannot generally recover the cost of measures taken to guard against likely damage from overhanging branches or encroaching roots.<sup>24</sup> For example, the installation of gutter shields or P.V.C. drainage pipes.

Abatement is a right, not an obligation. A tree owner cannot force an affected neighbour to cut back the tree to the boundary instead of, say, claiming compensation. Once the abatement is carried out, however, the affected neighbour may only claim, at most, compensation for damage suffered before the work is done.<sup>25</sup> That is not to say that abatement must be delayed until actual damage has occurred: the right to abate comes into existence as soon as the nuisance situation first occurs as roots or branches grow over the boundary line.<sup>26</sup>

### Local council orders

The Local Government Act 1999 s 254, gives councils the power to clean up private land, including trees. A council may order an owner or occupier of a property to remove overgrown vegetation, cut back overhanging branches, or to remove a tree where such growth creates or is likely to create, danger or difficulty to persons using a public place or is unsightly and detracts from the amenity of the local area.

If requested by an affected neighbour, a council has the power to require the owner or occupier of an adjoining property to remove or cut back encroaching vegetation (Local Government Act 1999 s 299(1)). However, some councils have indicated that they do not wish to be involved in neighbour disputes so this may not be an option.

### Tree owner removes the nuisance

An affected neighbour can always ask that a tree owner remove a nuisance situation by trimming back or removing their own tree. If the response is unsatisfactory a Community Mediation Service may be of assistance (see 'Where To Get Help' page 16). The only way that the tree owner can be required to do the work, however, is by applying to the Magistrates Court for an order. In South Australia any court applications for orders against neighbours based on nuisance may be heard in the Minor Civil Action jurisdiction of the Magistrates Court. In nearly all such actions the parties represent themselves - lawyers are not normally permitted to appear.

An order for a tree owner to cut back or remove a tree is an example of a type of court order called an injunction. These are orders requiring certain activities to cease or for particular action to be taken. Such orders will not be granted if the problem is temporary, occasional or trivial, can adequately be compensated by a small amount of money, and an order would be oppressive to the tree owner in the circumstances.<sup>27</sup> The motive of the person seeking an order and the conduct of the person opposing it are also relevant considerations.



In addition to proving the tree owner is liable for nuisance, an affected neighbour who wants an injunction requiring the cutting back or trimming of a tree must prove the likelihood of reasonably imminent and substantial or irreparable damage.<sup>28</sup> In other words, there must be a real, appreciable risk of significant damage from overhanging branches or invasive roots. The probability of root damage in 10 years would not, for example, justify an injunction.<sup>29</sup> It is also not enough to rely solely on reports of overhanging branches in the area coming down in the wind.<sup>30</sup> On the other hand, it is not necessary to prove damage has occurred already.<sup>31</sup>

The purpose of a court order is to remove the nuisance. In many cases the terms of the order will require the tree owner to prevent the offending roots or branches growing over the boundary. But the details of how this is to be done may be left to the tree owner.<sup>32</sup>

The complete removal of the tree may be ordered if the continued existence of the tree, even though it is on the owner's side of the boundary, constitutes a real and appreciable threat of injury or serious damage.

Alternatively, where it is not practical simply to cut back the roots or branches, and serious damage is continuing or will inevitably arise again, removal may be required.<sup>33</sup> An affected neighbour will not succeed in obtaining a removal order merely because the tree owner has planted trees close to the boundary which can be expected to grow across it and cause a nuisance, unless, perhaps, similar trees had already caused damage in this way.

The kinds of evidence normally relied on to support claims for court orders include photographs, site plans, reports from expert witnesses such as arborists, horticulturalists and consulting agencies, laboratory reports to identify roots (see 'Where To Get Help' page 16) and, occasionally, a site visit by the court (called a 'view').

## **Compensation for damage**

If actual damage has occurred because of a tree in an adjoining property, the affected neighbour should ask the tree owner to pay for it. In most cases this will be the cost of repair work to walls, roofs, gutters, paving or drainage pipes. Copies of quotations for the work should be sent with a written request to pay the amount of the lowest satisfactory quote. If the tree owner refuses, a Community Mediation Service may be able to assist in negotiating a mutually agreeable contribution to repair costs (see 'Where To Get Help' page 16). Otherwise, an application to the Magistrates Court may be necessary to get compensation.

Claims up to \$6000 may be made in the Minor Civil (Small Claims) jurisdiction of the Magistrates Court. Cases based on nuisance or negligence for sums greater than \$6000 may be heard in the General Jurisdiction of the Magistrates Court where lawyers can appear.

In cases where the tree roots or branches were growing across the boundary before the damage occurred, the application will be based on nuisance. In both negligence and nuisance situations, there are limits on what may be claimed. In either case, the affected neighbour would need to establish that the damage or loss was in fact caused by the tree and that it was reasonably foreseeable. In other words, there must have been more than merely a possibility of the problem occurring. It would, for example, be reasonably foreseeable that if a dying branch high in a tree near the boundary fell off in a storm it would damage the fence and maybe the tool shed on the other side.

Tree owners have been held by the courts to be liable to pay compensation for a variety of problems caused by overhanging branches:

- Animals becoming ill from eating off the branches <sup>34</sup>
- Branches and twigs moving in the wind and brushing against the affected neighbour's house keeping them awake <sup>35</sup>
- Leaves from the branches overhanging a roof blocking the gutters causing water damage to the building <sup>36</sup>
- Pine needles falling from overhanging branches <sup>37</sup>
- Damage to crops growing beneath the overhanging branches <sup>38</sup>
- Dying tree falling into the street <sup>39</sup>

Liability to pay compensation for damage caused by roots penetrating the soil across the boundary has been established in the following situations:

- roots absorbing moisture causing clay soil shrinkage and building damage <sup>40</sup>
- roots damaging substandard garage and wall <sup>41</sup>
- roots damaging stormwater and sewerage drains <sup>42</sup>
- roots undermining the affected neighbour's boundary wall causing it to collapse <sup>43</sup>
- damage to the neighbour's lawn and garden <sup>44</sup>
- loss of crops while roots are cleared <sup>45</sup>
- breaking of concrete paving in neighbour's yard <sup>46</sup>

In addition to the kinds of evidence which may be useful to support a claim for an injunction, the affected neighbour who claims compensation will need to obtain evidence proving that the damage has occurred and how much it will cost to repair. Expert reports and trade quotations will probably be necessary.

For affected neighbours, household insurance policies generally cover damage caused by falling trees or branches but may not cover tree root damage. For tree owners, household public liability insurance policies may or may not cover liability for both types of damage. Individual policies should be checked with insurers in every case.

## Is the tree protected?

While the law provides some remedies for the benefit of a neighbour affected by problems with a tree, it also provides a measure of protection for the tree owner and the tree.

### Action by neighbour

The neighbour affected by a tree nuisance situation has limited rights to take action against the tree.

The right to cut back the tree is limited by:

- a) the possibility of being held liable for trespass if the tree is cut beyond the boundary, and
- b) the possibility of being held liable for negligence if the tree is unnecessarily and carelessly harmed because of the way the job is done, and
- c) whether the tree is protected as a 'regulated or significant tree' and subject to development controls.

A claim for an order requiring the tree owner to do the pruning is only likely to succeed if substantial or irreparable damage is likely to occur soon. Orders for removal of trees are even more difficult to justify.

It must be stressed that in no circumstances is the affected neighbour legally justified in poisoning the tree, or going on to or leaning over the tree owner's land to carry out work on the tree unless given specific permission to do so. Such action could result in a court awarding compensation and exemplary damages for trespass to discourage other

people from doing the same thing.<sup>47</sup> It is also possible that the neighbour could be charged with a criminal offence. There is no right to go on to neighbouring land even to rectify a dangerous problem with a tree which is not a nuisance: the only right the law provides is a claim for compensation if it actually falls over and causes damage. Obviously, a timely warning to the tree owner will be the appropriate precaution.

### Significant and Regulated trees

The Development Act 1993 provides that any activity that damages a regulated or significant tree is development and requires council approval.

A 'regulated tree' is any tree in metropolitan Adelaide and townships in the Mt Barker and Adelaide Hills areas with a trunk circumference of 2.0m or more. In the case of trees with multiple trunks, those with trunks with a total circumference of 2.0m or more and an average circumference of 625mm or more, measured at a point 1.0m above natural ground level.

A 'significant tree' is also a regulated tree as above but with a trunk circumference of 3.0m or more, or any tree identified as a significant tree in the City of Adelaide, City of Burnside, City of Prospect or City of Unley Development Plans.

If a tree is classified as a significant or regulated tree, local council approval is required before it can be substantially pruned, damaged, killed or removed. Failure to obtain approval can attract a fine of up to



\$120,000. These requirements apply both to tree owners and affected neighbours.

### Exemptions

Council approval is not required to remove a significant or regulated tree if it is:

- one of the 22 species of exotic trees listed in the Development Regulations [6A] (see below), or
- located within 10 metres of an existing building or in-ground swimming pool (except if the tree is either a Willow Myrtle or any Eucalyptus), or
- within 20 metres of a dwelling in Medium or High Bushfire Protection Areas, or
- dead.

Maintenance pruning of less than 30% of a tree crown is not controlled where the pruning is required to remove dead or diseased wood or to remove branches that pose a material risk to buildings or areas frequently used by people. Pruning back a significant or regulated tree that is encroaching on your property – either branches or roots – does not require council approval unless it is likely to affect the health and appearance of the tree.

### Applications

A council may either approve an application, approve it subject to conditions or refuse it. No notice of applications will need to be given to neighbours unless the tree is on council land. The normal application fees apply for tree owners but there is no fee for an affected neighbour seeking approval to lop on their side of the boundary.

If approval has been given to remove a regulated or significant tree, the council may make it a condition that replacement trees are planted or that money is paid into an urban tree fund. An applicant has the right to appeal to the Environment, Resources and Development Court within two months of the council's decision.

### Exempted Tree Species

These tree species are not subject to development controls:

1. Box Elder
2. Silver Maple
3. Tree of heaven
4. Evergreen Alder
5. European Nettle Tree
6. Chinese Nettle Tree
7. Camphor Laurel
8. Monterey Cypress
9. Figs, other than a Morton Bay Fig located more than 15 metres from a dwelling
10. Narrow-leaved Ash
11. Desert Ash
12. Radiata Pine / Monterey Pine
13. London Plane
14. White poplar
15. Lombardy Poplar
16. Black Locust
17. Weeping Willow
18. Chilean Willow, Evergreen Willow, Pencil Willow
19. Crack Willow
20. White Crack Willow, Basket Willow
21. Golden Weeping Willow
22. Peppercorn Tree

## How can future problems be avoided?

A tree can be many things - a garden centrepiece, an object of beauty, a source of food, a structural support, a provider of shade. For some people a tree can also become a blot on the landscape, an object of ridicule, a source of frustration and an unending nightmare. Whether a tree is an asset or a liability depends largely on whether it is a good choice for the site. Choosing a tree is a bit like choosing members of a team - they must certainly not conflict or create problems, they have to do the job and, preferably, add something special.

When selecting a tree for a garden, householders should always get expert advice on features which may make it unsuitable. Poplars, willows and river red gums, for example, are notorious for their invasive water-seeking root systems, and dropping limbs. Elms and poplars produce suckers, eucalypts and pines generate litter, liquid ambers shed copious leaves and fruit, and lemon scented gum and camphor laurels grow very tall. Trees like these need plenty of space and water. Expert advice should be obtained from a qualified arborist or horticulturalist while a local nursery can give general information. A list of trees suitable for planting in suburban gardens can be helpful as a start. Once an appropriate species has been selected, care should be given to its siting, planting and maintenance.

Obviously large trees should not be planted close to buildings if their root system is likely to cause damage.

Where trees are already established in the area, care should also be taken when considering the siting and design of buildings, drainage systems, driveways and paving. Some types of soils are more prone to expansion and contraction as the moisture content rises and falls. Drainage systems also need to be sensibly planned around existing site features such as trees. They should be carefully jointed when laid so that a watertight seal is achieved, and properly backfilled with compacted sand to create a further root barrier. Driveways, paths and paving should be impervious to rain water to inhibit moisture concentration in the soil underneath. Plumbing systems should be checked regularly.

Well-established trees need to be checked periodically for dead, dying or over-extended branches, the presence of rot, termites or borers, and other indications of stress. Any wounds should be properly cleaned. The tree surrounds should allow for natural levels of absorption of rainfall as much as possible. Creepers should not be allowed to grow up the trunk or branches. If problems arise with spreading roots the problem may be one which can be rectified with a root barrier. Expert advice may be needed as to the type of barrier which will be necessary. In some cases a PVC membrane may suffice. In other cases, a deep concrete barrier may be required.

## Endnotes

- 1 *Brown v Harrison* (1947) 177 LT 281, *Smibert Group Transport P/L v Clifford* (2005) SADC 80 (8 July 2005)
- 2 *Bruce v Caulfield* (1918) 34 TLR 204
- 3 *Molloy v Drummond* (1939) NZLR 499, *Asman v Maclurcan* (1985) 3 BPR 9592
- 4 *Matthews v Forgie* (1917) NZLR 921, *Davey v Harrow Corporation* (1958) 1QB 60 at 71-2
- 5 *Lemmon v Webb* (1894) 3 Ch at 24
- 6 *Davey v Harrow Corporation* (1958) 1QB 60
- 7 *Ponting v Noakes* (1894) 2QB281
- 8 *City of Richmond v Scantelbury* (1991) 2 VR 38 at 40, 45
- 9 *Proprietors of Strata Plan 14198 v Cowell* (1989) 24 NSWLR 478 at 488, *Valherie v Strata Corporation No 1841 and Ors* [2004] SASC 170
- 10 *City of Richmond v Scantelbury* (1991) 2VR38 at 44, 47
- 11 *City of Richmond v Scantelbury* (1991) 2VR38 at 46-7
- 12 *Solloway v Hampshire County Council* (1981) 79 LGR 449
- 13 *Proprietors of Strata Plan 14198* (1989) 24 NSWLR 478
- 14 *Davey v Harrow Corporation* (1958) 1QB 60
- 15 *Young v Wheeler* (1987) Aust Torts Reports 80-126
- 16 *Holder v Coates* (1827) 173 ER 1099, *Speed v Money and Musson* (1904) 48 Sol Jo 674
- 17 *Lemmon v Webb* (1894) 3 Ch 1
- 18 *Gazzard v Hutchesson* (1995) S.A. Supreme Court Bollen J unpublished judgement number S5068
- 19 *Lemmon v Webb* (1894) 3 Ch 1
- 20 *Mills v Brooker* (1919) KB 555
- 21 *Loverock v Webb* (1921) 70 DLR 748
- 22 *Young v Wheeler* (1987) Aust Torts Reports 80-126
- 23 *Proprietors of Strata Plan 14198 v Cowell* (1989) 24 NSWLR478
- 24 *Young v Wheeler* (1987) Aust Torts Reports 80-126
- 25 *City of Richmond v Scantelbury* (1991) 2 VR 38 at 48
- 26 *Traian v Ware* (1957) VR 200 at 207
- 27 *Elliott v London Borough of Islington* (1991) 1 EGLR 167
- 28 *Mendez v Palazzi* (1976) 68 DLR 582
- 29 *Asman v Maclurcan* (1985) 3 BPR 9592
- 30 *Cannon v Newberger* (1954) 268 P (2d) 425
- 31 *King v Taylor* (1976) 1 EGLR 132
- 32 *Roud v Vincent* (1958) NZLR 794
- 33 *Mandeno v Brown* (1952) NZLR 447
- 34 *Crowhurst v Amersham Burial Board* (1878) 4 Ex D 5
- 35 *Rose v Equity Boot Co Ltd and Hannafin* (1913) NZLR 677
- 36 *Rose v Equity Boot Co Ltd and Hannafin* (1913) NZLR 677
- 37 *Mandeno v Brown* (1952) NZLR 447
- 38 *Smith v Giddy* (1904) 2 KB 448
- 39 *Brown v Harrison* (1947) 177 LT 281
- 40 *Butler v S.T.C.* (1940) 1 KB 399, *McCombe v Read* (1955) 2 QB 429, *City of Richmond v Scantelbury* (1991) 2 VR 38, *Valherie v Strata Corporation No 1841 and Others* [2004] SASC 170
- 41 *King v Taylor* (1976) 1 EGLR 182
- 42 *Morgan v Khyatt* (1964) 1 WLR 475
- 43 *Middleton v Humphries* (1913) 47 LT 160
- 44 *Mendez v Palazzi* (1976) 68 DLR 582
- 45 *Roud v Vincent* (1958) NZLR 794
- 46 *Saat v Leonardis* (1990) SA Supreme Court Olsson J, unpublished judgement 2701
- 47 *Gazzard v Hutchesson* (1995) SA Supreme Court Bollen J, unpublished judgement S5068
- 47 *Belluco v Netting & Netting* [2010] SADC 12



## Where to get help

### Technical

#### Advice on selecting trees

State Flora (advice and sales of native trees) Jubilee Drive, Belair National Park  
Tel: **8278 7777**

#### Condition reports and treatment

See 'Tree Surgeons' (or arborists) in the Yellow Pages

#### Removal

See 'Tree Felling and/or Stump Removal' in the Yellow Pages.

#### Root sample testing

Australian Water Quality Centre  
Hodgson Road, Bolivar  
Tel: **1300 653 366**

#### Root removal from pipes

See 'Plumbers and Gasfitters' in the Yellow Pages.

#### Building damage reports

See 'Engineers - Consulting' (Footing Design specialists) in the Yellow Pages.

### Community Mediation Services

Community mediation services can help neighbours to resolve problems without going to court.

For an appointment

*Telephone:* **8350 0376**  
**1300 850 650**

### Legal Services Commission

[www.lsc.sa.gov.au](http://www.lsc.sa.gov.au)

Legal Help Line **1300 366 424**  
(TTY 8463 3691)

#### Adelaide Office

82-98 Wakefield Street  
Adelaide 5000  
*Telephone* **8463 3555**

#### Elizabeth Office

Windsor Building  
Elizabeth Shopping Centre  
Elizabeth 5112  
*Telephone* **8207 9292**

#### Holden Hill

Tenancy 7, 560 North East Road  
Holden Hill 5088  
*Telephone* **8369 1044**

#### Mt Barker

18 Walker Street  
Mt Barker 5251  
*Telephone* **8226 8722**

#### Noarlunga

Noarlunga House  
Colonnades Shopping Centre  
Noarlunga Centre 5168  
*Telephone* **8207 3877**

#### Port Adelaide

306 St Vincent Street  
Port Adelaide 5015  
*Telephone* **8207 6276**

**Port Augusta**

13 Flinders Terrace  
Port Augusta SA 5700  
*Telephone 8648 5180*

**Whyalla**

Tenancy 7, 169 Nicolson Ave  
Whyalla Norrie 5608  
*Telephone 8648 8940*

**Community Legal Centres**

**Central Community Legal Service**

Shop 2, 59 Main North Road  
Medindie Gardens 5081  
*Telephone 8342 1800*

**Environmental Defenders Office**

408 King William St  
Adelaide SA 5000  
*Telephone 8410 3833*

**Northern CLS**

26 John Street  
Salisbury 5108  
*Telephone 8281 6911*

**Riverland CLS**

8 Wilson Street  
Berri 5343  
*Telephone 8582 2255*

**Southern CLS**

40 Beach Road  
Christies Beach 5168  
*Telephone 8384 5222*

**South East CLS**

9 Penola Road  
Mount Gambier 5290  
*Telephone 8723 6236*

**Westside Community Lawyers Inc.**

Parks Community Centre  
Trafford Street  
Angle Park 5010  
*Telephone 8243 5521*

**Port Pirie Office**

60 Florence Street  
Port Pirie 5540  
*Telephone 1800 114 442*

**Women's Legal Service**

151 Franklin Street  
Adelaide 5000  
*Telephone 8221 5553 (Advice)*  
*Toll Free: 1800 816 349*

