

# Neighbours' Trees And The Law



Produced by the Community Mediation Services of South Australia with the support of the Law Foundation of South Australia

This booklet was produced for public information by the Community Mediation Services of S.A. The assistance of the Legal Services Commission of S.A. and the Law Foundation of S.A. is gratefully acknowledged.

Printed by Eureka Quality Printers

Graphics by Simon Kneebone

**Footnotes:**

Most of the law covered by this booklet is common law. It is not to be found in Acts of Parliament. Common law is made up of the principles which courts have used to decide cases in the past. The footnotes in this booklet include the names of relevant cases and the references to reports of the judgments. They can be found in law libraries.

**Disclaimer:**

This booklet is a general guide to the law on neighbour tree problems and is not intended as a substitute for legal advice. In the case of a dispute, the reader is strongly urged to seek the assistance of one of the agencies listed at the back of this booklet and a private lawyer if necessary. While care has been taken to ensure the accuracy of the material contained in this publication, no responsibility can be taken for any errors or omissions.

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## **INTRODUCTION**

In our gardens, trees can provide us with shade, 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 plants trees in the street, they cannot be made liable for any damage resulting from the trees' location or growth (Section 315(3) Local Government Act). 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 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986, 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?
- (2) Is the tree owner legally responsible?
- (3) What can the affected neighbour do?
- (4) Is the tree protected?
- (5) How can future problems be avoided?

## **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 may 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 root sample more than 4-5 mm in diameter (see "Where To Get Help").

## **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 remaining entirely on the tree owner's land**

In most cases there will be no liability at all for problems caused by a tree which remains 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 its owner'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 for 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 recognized as significant problems.<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 'nuisances'. <sup>6</sup> A tree which remains entirely on the owner's side of the boundary cannot, technically, be a nuisances.<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**

Owners who bought the property with the 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> 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 (see 'Where To Get Help').

The 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 own 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 will be an advantage 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, whether the tree owner is legally responsible for the problem or not.

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

## **The parties discuss the problem**

It is wise for people to think carefully about exactly what they want before raising a problem with a neighbour. When the problem is first mentioned it is vital that no hostility be expressed, either verbally or in body language. 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 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")

## **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 need to 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> Examples are 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>

## **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'). 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 (sometimes known as the 'Small Claims Court') In nearly all such actions the parties represent themselves - usually lawyers are not 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 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, trees of a similar variety 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') 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'). Otherwise, an application to the Magistrates Court may be necessary to get compensation.

In cases where the tree roots or branches were growing across the boundary before the damage occurred, the application will be based on nuisance. Claims may be made in the Minor Civil Action ('Small Claims') jurisdiction of the Magistrates Court. Nuisance cases involving claims for more than \$5,000 may be heard in the General Jurisdiction, where lawyers can appear, if either party so chooses at the directions hearing. In other cases, based on negligence, the claim will only be a 'small claim' if the amount sought is under \$5,000. Otherwise it will have to proceed in the General Jurisdiction.

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 well 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 must 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 action being taken against the tree itself.

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.

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 the criminal offence of causing unlawful damage (section 85 of the Criminal Law Consolidation Act). 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.

Under the criminal law (sections 148 and 149 of the Criminal Law Consolidation Act), it is an offence to break or cut off or pull out a tree or any part of a tree growing in someone else's property without permission and with the intention of depriving the owner permanently, provided the value of the material taken, or the damage, exceeds ten cents.

## **Action by owner**

Neighbours can do little to stop tree owners doing as they wish with their own trees as long as the trees remain entirely on the owner's side of the fence. If a branch of a tree extends over the neighbour's property, the neighbour's permission to access their land may be practically necessary for its safe removal.

In some rare cases it may be possible to have the tree protected by the State or local government as a heritage item, so that the owner cannot remove it. Very few trees are included as heritage places on the Register for protection under the (State) Heritage Act 1993 and those are usually on public land. It is more likely that a tree on private land could be designated a "local heritage place" under the Development Act 1993. This may be possible if the tree "has played an important part in the lives of local residents", "displays aesthetic merit" "is associated with a notable personality or event" or "is a notable landmark in the area" (Section 23(4)). Notice of proposals to amend the Development Plan to designate such places must be given to the owners, inviting them to make submissions to the local Council before public consultation is undertaken (Section 25(12)).

## **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 was 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 ambar shed copious leaves, 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. A local nursery can give general information. A list of trees suitable for planting in suburban gardens can be helpful as a start. (See the State Flora fact sheets and catalogue and the SA Water "Tree Planting Guide" fact sheets : "Where To Get Help"). 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. Obtaining soil tests and consulting engineers recommendations on footing design are generally considered necessary preconditions to building a home in Adelaide. 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 water-compacted sand to create a further root barrier. Driveways, paths and paving need to be impervious to rain water to inhibit moisture concentration in the soil underneath. Plumbing systems should be checked regularly and any leaks repaired.

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. 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. Any wounds should be properly cleaned.

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.



Footnotes:

1. Brown v Harrison (1947) 177 LT 281
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) NZLIZ 921, Davey v Harrow Corporation (1958) IQB 60 at 71-2
5. Lemmon v Webb (1894) 3 Ch at 24
6. Davey v Harrow Corporation (1958) 1Q11 60
7. Ponting v Noakes (1894) 2QB281
8. City of Richmond v Scantelbury (1991) 2 V R 38 at 40,45
9. Proprietors of Strata Plan 14198 v Cowell (1989) 24 NSWLIZ 478 at 488
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 24 NSWLR 478
14. Davey v Harrow Corporation (1958) 1Q11 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 VIZ 38 at 48
26. Traian v Ware (1957) VR 200 at 207
27. Elliott v London Borough of Islington (199 1) 1 EGI-R 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 E6LR 132
32. Roud v Vincent (1958) NZLIZ 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) NZLIZ 677

36. Rose v Equity Boot Co Ltd and Harmafin (1913) NZLIZ 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 VIZ 38
41. King v Taylor (1976) 1 EGI-R 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 O1sson J unpublished judgement number 2701
47. Gazzard v Hutchesson (1995) S.A. Supreme Court Bollen J unpublished judgement number S5068

## **WHERE TO GET HELP**

### **TECHNICAL**

Advice on planting See local garden centre or "Garden Equipment and Supplies" in the Yellow Pages State Flora (advice, catalogue, fact sheets), Jubilee Drive, Belair National Park 82787777 SA Water ("Tree Planting Guide" fact sheets) 8204 1000 or 8204 1188

#### **Condition reports and treatment**

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

#### **Removal**

See "Tree Felling andlor Stump Removal" in the Yellow Pages.

#### **Root information**

Australian Water Quality Centre, Hodgson Road, Bolivar 82590215

#### **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. Or contact The Association of Consulting Engineers Australia, 11 Bagot Street, North Adelaide 8239 1688

## LEGAL

Local Councils are generally not able to help with neighbour tree problems except by directing you to other agencies. A local Home Assistance program may be able to help pensioners and other low income residents with pruning or lopping work at inexpensive rates.

The Police are concerned with criminal activity such as assault, theft, serious and intentional damage, and threats to safety. In most neighbour dispute situations they will endeavour to facilitate some measure of agreement so as to prevent a breach of the peace.

A Council or police officer may refer people to Community Mediation Services for assistance in negotiating a mutually satisfactory arrangement. A referral to a legal aid agency for free legal advice may also be appropriate.

### **Community Mediation Services**

Phone for an appointment

#### **Norwood Community Mediation Service**

110 The Parade Norwood SA 5067

Telephone (08) 8362 1199

#### **Western Mediation Service**

19 Green Street Brompton SA 5007

Telephone (08) 8340 1982

#### **Noarlunga Community Mediation Service**

40 Beach Road Christies Beach SA 5165

Telephone (08) 8384 5222

Services available in some country areas as well. Contact details are held at metropolitan offices.

## **Community Legal Centres**

Phone for an appointment

### **Parks Legal Service**

Parks Community Centre  
Trafford Street  
Angle Park SA 5010  
Telephone (08) 8243 5521

### **Bowden Brompton**

**Community Legal Service**  
19 Green Street  
Brompton SA 5007  
Telephone (08) 8346 9394

### **Norwood Community Legal Service**

110 The Parade  
Norwood SA 5067  
Telephone (08) 8362 1199

### **Noarlunga Community Legal Service**

40 Beach Road  
Christies Beach SA 5165  
Telephone (08) 8384 5222

### **Marion Community Legal Service**

Marion Community House  
Cnr Morphett & Oaklands Road  
Warradale SA 5046  
Telephone (08) 8376 1300

### **Para Districts Community Legal Service**

47 Wayford Street  
Elizabeth Vale SA 5112  
Telephone (08) 82816911

### **Adelaide Inner Northern Community Legal Service**

21 May Street  
Sefton Park SA 5082  
Telephone (08) 8342 1800

### **Womens Legal Service**

135 Waymouth Street  
Adelaide SA 5000  
Telephone (08) 8221 5553

### **Environmental Defenders Office**

118 Halifax Street  
Adelaide SA 5000  
Telephone (08) 8232 7599

## **Legal Services Commission of S.A.**

### **For Telephone Legal Advice:**

**Phone:** Adelaide Callers (08) 8205 0155  
**Country Callers** 1800 188 126 (toll free line)  
TTY 8232 5582

**For all other enquiries:**

**Adelaide Office:**

82-98 Wakefield Street  
Adelaide SA 5000  
Telephone (08)8205 0111

**Modbury Office:**

4 Smart Road  
Modbury SA 5092  
Telephone (08)8265 4088

**Elizabeth Office:**

Ground Floor, Windsor Building  
Elizabeth Centre, Elizabeth  
SA 5112  
Telephone (08)8255 4233

**Noarlunga Office:**

Noarlunga House  
Noarlunga Centre SA 5168  
Telephone (08)8207 3877

**Port Adelaide Office:**

2 Marryatt Street  
Port Adelaide SA 5015  
Telephone (08)8341 1333

**Whyalla Office:**

1st Floor, RAA House  
25 Forsyth Street  
Whyalla SA 5600  
Telephone (08)8645 5877

Brochures published by the Commission and available free of charge are:

1. Need Legal Help?
2. Power of Attorney
3. De Facto Relationships
4. Motor Vehicle Accidents
5. Wills
6. Debts
7. Carer Parents and Child Support
8. Liable Parents and Child Support
9. Going to Court
10. You and the Police
11. Neighbours
12. Bankruptcy

Also ask for free booklets on **Family Law and You**, **Strata Titles and the Law**, **Worker's Rights**, and **Cycling and the Law**, pamphlets on **The Law and Your Dog**, **Restraining Orders**, and **Need Legal Help?** cards in 12 languages.

You can buy the Law Handbook - a layperson's guide to the law in South Australia, at Commission offices and selected bookshops. The Enduring Power of Attorney Kit and the Enduring Power of Guardianship Kit are also available for sale.