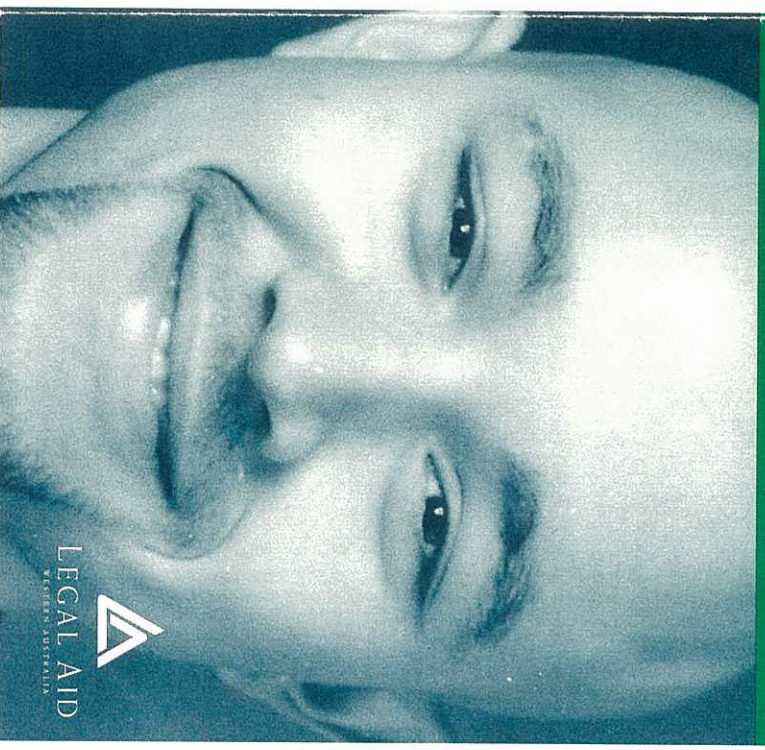


LEGAL AID

# Encroaching Roots and Branches

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FURTHER INFORMATION  
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Telephone: (08) 9261 6222  
Facsimile: (08) 9325 5430

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Telephone: (08) 9091 3255  
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Koombana Court, 141 Victoria Street, Bunbury, WA 6230  
Telephone: (08) 9721 2277  
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Telephone: (08) 9164 7529  
Facsimile: (08) 9164 7162

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## Encroaching Branches and Roots

Trees are a highly desirable part of the landscape and, wherever possible, a certain amount of any inconvenience associated with them should be tolerated.

This pamphlet outlines your legal rights if your neighbour's tree has branches which overhang your property or roots extending underneath your property which are causing damage or inconvenience.

If you consider your neighbour's tree is a danger to either people or your property, you should notify your local council as the *Local Government Act* empowers a council to take steps requiring the owner to make the tree safe.

Local councils also have the capacity to make by-laws which may modify some or all of the information set out in this pamphlet. You should make enquiries with your local authority before taking any action.

### What can be done?

If a branch or root encroaches upon your 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.

The law does not require you to give prior notice of removing branches or roots from your property, but it is both sensible and advisable for you to notify your neighbour that there is a problem and what you intend to do.

Any root or branch, or any flower or fruit growing on a branch that is removed, remains the property of the tree's owner and should be returned to your neighbour.

Care should be taken in the way branches or roots are returned to your neighbour as you will be responsible for

any damage or littering that may be caused. Again, it is advisable for you to notify your neighbour of what you intend to do.

### Payment for damage caused by a neighbour's tree

There may be significant costs involved in repairing damage caused by a neighbour's tree. Encroaching roots may damage the foundations of your house or garage, block drains or raise brick paving; overhanging branches may drop leaves into your gutters or prevent your own trees and crops from growing.

You should notify your neighbour in writing of the damage, together with the costs of any repairs and other expenses. In your letter, ask how he/she proposes to pay for any costs that have been incurred and request that he/she has the tree, or the offending part of the tree, removed. You should keep a copy of the letter.

Once he/she has become aware of it, or ought to have become aware of it, there is a legal obligation on the part of your neighbour not to allow the damage to continue or worsen.

If no agreement with your neighbour can be reached, it may be necessary to issue legal proceedings and the court may make an order against the owner of the tree requiring him/her to have the offending branches or roots removed.

*Legal action against neighbours can lead to bad relationships which cannot be repaired. Legal Aid may be able to advise you about the alternatives to legal action such as negotiation or other dispute resolution services which, in many circumstances, may be a practical option.*

Before taking any steps which may involve significant costs or starting any legal proceedings, you should get legal advice or call Legal Aid WA's Information Line for further information.