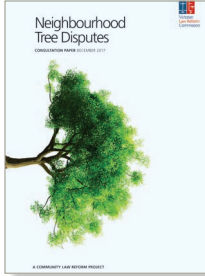


# Neighbourhood Tree Disputes

— a community law reform project

The law around tree disputes is complex, confusing and they are hard to resolve.



## 8 June 2017

The VLRC commenced a review of the law regarding neighbourhood tree disputes.

## December 2017

The Commission published a consultation paper explaining the current law, asking questions about how the law should change, and inviting the public to make submissions by 28 February.

## January 2018

The Commission published a video on its website about neighbourhood tree disputes.

## February 2018

38 submissions were received which were published on the VLRC website. Submissions came from members of the public, arborists, councils, courts and lawyers, among others.

## February–March 2018

The Commission consulted with stakeholders including community members, arborists, councils, courts and Aboriginal Victoria.

## April 2017

127 responses were received to an online survey about neighbourhood tree disputes.

## July 2019

The Commission delivered its report including 63 recommendations to the Attorney-General.

### What was this project about?

The project was about disputes which arise between neighbours because of trees growing on private land.

Trees are a valuable part of our urban and suburban environment. However, trees sometimes disturb neighbours' use and enjoyment of their own land. Tree disputes are surprisingly common and can be a source of ongoing disagreement and tension between neighbours.

Neighbours sometimes argue about overhanging branches, roots that cause damage to foundations and drains, unsafe trees that create hazards and the loss of vegetation.

### Why did the law need to change?

The law in relation to tree disputes in Victoria is difficult to find and use. There is no single Act of Parliament relating to tree disputes. Instead, there are various state and local laws that relate to vegetation, heritage, the environment, planning and fences. The law on tree disputes is also found in the common law (established by court cases) but common law principles don't neatly apply to tree disputes. It is not always clear what people are required to do by law about their trees or their neighbours' trees.

The processes to resolve tree disputes are confusing and expensive. Many people are not sure of their rights and responsibilities regarding trees on private land, and information is hard to find. Often disputes remain unresolved. Court cases are expensive and time-consuming, the result is uncertain, and they are not a realistic option for most people.

The law needs to be clearer and there should be a better process to resolve disputes.

### Origin of the project

Under the *Victorian Law Reform Commission Act 2000*, section 5(1)(b), the Commission has the power to initiate some of its own projects without a reference from the Attorney-General. These projects must be "relatively minor legal issues of general community concern" and are known as community law reform projects.

The Neighbourhood Tree Disputes project arose from community enquiries and suggestions that the law should be improved. The Dispute Settlement Centre of Victoria (DSCV) also advised the Commission that community members often ask for help mediating tree disputes with their neighbours. The Commission considered the matter and decided this would be a suitable community law reform project.

### The Commission's task

The Commission reviewed the legal framework for resolving disputes between neighbours about trees on private neighbouring land that cause damage and/or harm. It considered whether the law should be reformed to provide more just, effective and timely ways to resolve these disputes.

All relevant documents and publications are available on the Commission's website at [lawreform.vic.gov.au](http://lawreform.vic.gov.au)

### **What did the community say?**

Community members told the Commission that they found it hard to resolve neighbourhood tree disputes because the law is confusing, and they do not know who can assist them. Other submissions said that the law was unclear because there are too many planning laws and local laws that overlap. Many responses stated there is no clear process for resolving disputes, and there is a lack of clear remedies. Very few people take legal action, because it is too expensive and time-consuming to go to court, but there is no easier, cheaper, reliable method.

There was overwhelming support for the introduction of a new dedicated Act to better help people resolve their disputes.

### **Report and Recommendations**

The Commission's key recommendation was to introduce a new Neighbourhood Tree Disputes Act in Victoria to provide clarity to the law and guidance to the community on how to resolve tree disputes. A new Act would be the best way to ensure the fast, cheap and effective resolution of these disputes. Some other states have already enacted legislation to govern the resolution of tree disputes.

The new Act should assist the community to resolve their own disputes informally. The Commission recommended more community education to help people understand the new Act, how to prevent disputes arising, how to resolve a dispute, and what assistance is available. This means that fewer disputes would need to be resolved through a formal process.

When disputes can't be settled informally, the Commission recommended that the Victorian Civil and Administrative Tribunal (VCAT) should make decisions about tree disputes, with the assistance of tree experts (such as arborists). VCAT is much cheaper and easier to navigate than a court. The Act should provide clear principles to assist VCAT to make its decision. VCAT should be able to make orders to provide remedies when a tree causes damage to property or harm to anyone on the neighbour's land or is likely to do so, such as tree works and the payment of compensation for property damage.

The Act should also define which trees and land the Act applies to; what processes should be followed in a formal dispute; the roles of experts; and matters that VCAT must consider (including the location of the tree and its health, its environmental and aesthetic value and the cultural importance of particular trees).

The Commission recommended that the new Act should be reviewed after five years to check that it is working well.

To view all 63 recommendations, visit the VLRC's website.

### **What happened next?**

The Attorney-General launched the report at the Victorian Parliament in November 2019 and stated that the government intended to implement the Commission's recommendations.

### **More information**

Visit [lawreform.vic.gov.au](http://lawreform.vic.gov.au) and look under All Projects for more about Neighbourhood Tree Disputes.