

## NEIGHBOURHOOD TREE DISPUTES

<b>Number</b>	10
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**1 Have you been involved in a neighbourhood tree dispute? What was it about and what was the outcome?**

I have extensive experience in dealing with tree disputes. Each case was different

**2 Have you been involved in a DSCV mediation about a neighbourhood tree dispute? What was your experience?**

No

**3 Have you been involved in a Victorian court case about a neighbourhood tree dispute? What was your experience?**

Yes: careful preparation enabled the court to conclude in my client's favour.

**4 Are the current law and process for resolving neighbourhood tree disputes in Victoria satisfactory? If not, why not?**

No: because many people are irrationally attached to their trees, and this prevents them from making a balanced decision

**5 Are there any aspects of international jurisdictions' approaches to resolving neighbourhood tree disputes that should be considered in Victoria?**

I do not know

**6 If the existing system is retained, are there any specific changes necessary to improve it?**

Compulsory mediation

**7 Should a statutory scheme for resolving tree disputes be adopted in Victoria? What should the overarching aims of a new scheme be?**

This depends on the adopted principles. Is retention of a tree the most important consideration, or is safety, or are other perceived entitlements to sunlight or to a view?

**8 What type of vegetation should be covered by a statutory scheme? Is there any vegetation that should not be covered?**

I would have thought that the height of the vegetation was almost always critical. Cypress hedges can be very tall, even though they are not characterised as trees. Recent trends in the use of lilly-pilly trees or magnolia grandiflora as hedges would appear to be eligible as 'trees'. Some climbing plants occupy tall hedges also: ivy, bougainvillea, wisteria and some roses achieve great heights. I think that all should be treated as 'trees'.

**9 Should the application of a statutory scheme be limited to land in particular zones? If so, which zones?**

Rural holdings often establish very tall 'hedges' of hawthorn, Douglas fir, low but dense eucalyptus such as mallee, and all are vital to protection of livestock and sown crops. We should not wish to interfere where the hedge is protective. Urban gardens often contain plantings which offer privacy especially where houses are close together. Modest growth should be allowed.

**10 Should there be a requirement that the affected neighbour's land adjoin the tree owner's land? If so, how should the relevant degree of proximity be defined?**

No. The test should be whether the tree concerned impinges on the complainant's use of their land. Overshadowing by very tall trees can easily occur from quite a long distance away.

**11 How should trees that are partially on the tree owner's land be dealt with under a statutory scheme?**

Shared responsibility

**12 Who should have standing to bring a legal action in tree disputes under a new scheme?**

Anyone affected (but not trivially)

**13 Who should be liable for harm or damage caused under a new scheme?**

The owner of the tree - including municipalities

**14 Should interference (not causing damage) be actionable under a new scheme? If so what degree of interference?**

Great idea. I am mindful of the harbourside dwellers in Sydney who have no compunction in killing trees to enhance their views. But people who cut off branches of overhanging trees should not in general be liable, although if this destabilises the tree, there may be an argument to the contrary

**15 What degree of damage should be sufficient to bring an action under a new scheme?**

Too hard.

**16 What kind of damage should be covered under a new scheme? Should damage include damage to land itself, or only to property on the land?**

**17 Should future damage be actionable under a statutory scheme? If so, should a particular time period be specified?**

**18 What degree of harm should be sufficient to bring an action under a statutory scheme?**

**19 How should the relevant subject of the harm be determined? Should harm include harm to occupiers only, to others on the land, or to anyone at all?**

**20 Should future harm be actionable under a statutory scheme? If so, should a particular time period be specified?**

One can imagine a neighbour objecting to another's decision to take down a large tree which is wholly on their property. Do we then demand that a new tree be planted?

**21 Which court/s or tribunal should have jurisdiction over neighbourhood tree disputes under a statutory scheme?**

Local courts

**22 What preconditions, if any, should parties have to satisfy under a statutory scheme before any orders are made?**

Compulsory mediation and joint arborists's report if the health of the tree is in doubt.

**23 What factors should be taken into account by the decision maker before making any determinations under a statutory scheme?**

A view is almost always de rigueur.

**24 Should there be a hierarchy or relative weight for each of these factors? If so, how should this be determined?**

**25 What types of orders should be available under a statutory scheme?**

**26 How should these orders be enforced?**

**27 Should the common law right of abatement remain available to affected neighbours under a statutory scheme? Should it be modified in any way?**

The big issue here is the return of the lopped material to the owner of the tree. Do we insist on this? I know that the dumping of the loppings is often a source of much confrontation.

**28 To what extent, if any, should orders made under a statutory scheme override or modify:(a) local laws?(b) other legislation?**

Tree disputes are pretty much unique. The only conflict might be where, for example, trees have been planted as part of a planning order or scheme. How to deal with this?

**29 What factors should be taken into account in relation to the appointment or qualifications of experts giving evidence about neighbourhood tree disputes?**

Qualified arborists are common enough. Unqualified loppers are two a penny. The expert must provide proof of qualifications. One expert should be appointed in each case. Otherwise there will be a dispute as to the expert report. We want to achieve quick results at minimal cost.

**30 Should the decision-making body issue guidelines or model reports to guide expert evidence?**

With respect, courts know nothing about trees, by and large. To reach such a conclusion would require considerable training for which the legal system is ill-prepared.

**31 Should new owners of land who take the place of the affected neighbour be bound by the outcome of legal action regarding relevant trees on the land?**

Obviously yes. The aim of the system is to provide a result which is quick, courteous and final.

**32 Should new owners of land who take the place of the tree owner be bound by the outcome of legal action regarding relevant trees on the land?**

Yes

**33 At what point during the sale and/or transfer of land process should a purchaser become bound by the outcome of legal action: (a) on transfer of title? (b) on entering into a contract of sale? (c) at some other time?**

If it is intended to make orders in this jurisdiction binding on the land like a covenant, there are the additional considerations of deciding when the order affects and when the purchaser can take part in the proceedings.

**34 Should new owners be joined as a party to a proceeding that is already underway? If so, at which point of the sale and/or transfer of land process?**

Obviously the proceedings must be disclosed in the section 32 statement first. The purchasers need to know what they are buying into.

**35 Should a searchable database of orders relating to trees be made available in Victoria?**

You are really getting expensive here.

**36 What types of resources should be made available to community members to complement a statutory scheme?**

**37 Should an online dispute resolution platform dedicated to neighbourhood tree disputes be introduced in Victoria? If so, what tools should be made available on this platform and who should administer it?**

Are tree disputes so prevalent?

**38 Are there any other specific features of a statutory scheme that the Commission should consider?**

**39 Do you have an alternative option for reform that you would like to see introduced in Victoria?**

Unless tree disputes are so common that a huge amount of money should be dedicated to solving them, and I do not know the answer to that, is this truly a matter which demands such expensive measures? A cost benefit analysis needs to be performed first.