

NEIGHBOURHOOD TREE DISPUTES

Number	13
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1 Have you been involved in a neighbourhood tree dispute? What was it about and what was the outcome?

No.

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?

No

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

No. They fail to recognise the changes in urban density, climate - particularly water shortages and management and especially, fire risk. They also do not provide adequate dispute resolution services for neighbours, or neighbourhoods.

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

Don't know.

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

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

Yes.

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

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

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?

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

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

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

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

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

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?

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

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

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

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?

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

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

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

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?

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?

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?

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?

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

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?

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

Fire risk - I live in a designated high fire risk country town. I have lived through a few major bushfires. After Black Saturday I shifted into a brand new house that I had designed with low fire risk. I had the Country Fire Authority come to do a BAL (Bushfire Attack Level) assessment. My property was given a good rating, up until the officer walked around the corner and looked up my driveway and saw the 2 huge radiata pines that are in my neighbours back yard. He then said, sorry, its now off the scale. Those 2 trees pose a major fire risk because of the massive radiant heat they would give out once alight from ember attack. Local government only require dead trees and high, dry grass that pose a fire risk to be removed. With climate change and the increased frequency and severity of bush fires, trees in built up areas, especially in areas designated as high fire risk country towns and urban fringe, that are high risk trees because of the type of

tree, its combustibility and size, should be identified and required to be moved. The 2 huge radiata pine trees are still in my neighbours back yard. I conversationally referred to them once with my neighbours and they said they would cost a lot to remove. They would. However, that cost would be miniscule compared to the loss of my home and those of the other adjoining and nearby houses in the neighbourhood.

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