



Magistrates' Court  
Victoria

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Melbourne Magistrates' Court  
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26 February 2018

The Hon. P.D. Cummins AM  
Chair  
Victorian Law Reform Commission  
GPO Box 4637  
Melbourne Vic 3001

DX 144, Melbourne

Dear Mr Cummins

**Re: Neighbourhood Tree Disputes**

I acknowledge receipt of your correspondence received on 19 December 2017.

In response to the invitation, please find attached a brief submission made on behalf of the Magistrates' Court of Victoria.

Yours faithfully

Peter Lauritsen  
Chief Magistrate



## **SUBMISSION MADE ON BEHALF OF THE MAGISTRATES' COURT OF VICTORIA NEIGHBOURHOOD TREE DISPUTES**

The Victorian Law Reform Commission ("VLRC") has pursuant to s 5(1) (b) of the Law Reform Commission Act 2000 (Vic) on 8 June 2017 initiated a reference in order to consider the current legal framework for the resolution of neighbour disputes about trees on private land where damage is caused or harm is threatened and the sufficiency of the existing legal framework for the resolution and determination of disputes.

The VLRC has called for submissions by interested parties.

The Magistrates' Court of Victoria ("MCV") wishes to respond to the invitation for submissions in a limited form. The MCV is of the opinion that a decision whether a statutory scheme for resolving tree disputes be adopted in Victoria is a matter of policy and therefore a matter for the VLRC on advice to Government. In addition the content of a statutory scheme if adopted by government will inform many of the practices and directions appropriate to such a scheme and whilst some guidance can be gleaned by established processes in court and tribunals in various jurisdictions about the manner of the giving of expert opinion evidence and other essential elements of a statutory scheme, the content and form of the same will inevitably be influenced by the language and objectives of any specific conferral of statutory powers.

The MCV, however, makes the following brief submission in response to Question 21:

*Which court/s or tribunal should have jurisdiction over neighbourhood tree disputes under a statutory scheme? Are the current law and processes for resolving neighbourhood tree disputes in Victoria satisfactory? If not, why not?*

In the event however that Government established a statutory scheme to address such disputes, the MCV is of the opinion it would be suitably equipped to have conferred on it the responsibility for the implementation and operation of such a scheme and that a statutory scheme would readily work in conjunction with the suite of powers the MCV already possesses as a court of law.

The contents of the VLRC Consultation Paper identifies the principal jurisdictional reach relevantly of the Magistrates Court of Victoria (MCV), the County Court of Victoria, the Supreme Court of Victoria and the Victorian Civil and Administrative Tribunal (VCAT). Currently VCAT cannot exercise the powers of a common law court in relation to tree disputes.

The MCV by way of comparison already hears and determine a range of matters and grants relief in various forms that would in all likelihood need to be encompassed in a statutory scheme in order to be efficacious.

The MCV's principal advantage over VCAT or a separate statutory tribunal in administering a statutory scheme relating to domestic tree disputes can be summarised as follows:

- (I) The MCV is conferred with equitable jurisdiction commensurate with its monetary limit of \$100,000.
- (II) Parties may by consent agree to the MCV determining claims where an amount in dispute exceeds the monetary jurisdiction.
- (III) The conferral of equitable jurisdiction allows the MCV to issue all forms of injunctive relief including orders in which proceedings have not been commenced and damage has not occurred but imminent risk of harm is threatened.



- (IV) The MCV has the largest suburban and regional reach of any adjudicative body in Victoria and although the MCV is a “proper forum” court for the commencement of civil disputes under the Magistrates’ Court Act (the “MC Act”) a dispute can be transferred as appropriate or the dispute heard and determined by a Magistrate of Judicial Registrar at a venue convenient to the parties.
- (V) The MCV has implemented a substantial video hearing capacity with all principal courts equipped to take evidence by video thereby bringing remote litigants together for a hearing and determination of a dispute.
- (VI) The MCV unlike a tribunal may exercise powers under the Civil Procedure Act (2010) (the “CP Act”). The suite of powers conferred by the CP Act are extensive and confer on a court an wide range of powers that may be exercised in the case management of litigation so as to give effect to the overarching purposes of the CP Act “*to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute*”.<sup>1</sup> These powers extend to an expansion of the power of courts in relation to costs and the grant of extensive powers in the pre-trial and trial aspects of litigation including document production and the manner and form of the provision of expert opinion evidence as well as the imposition of time limits on parties in the perennation of their case.

The MCV has a suite of Alternative Dispute Resolution mechanisms available to it that it applies to a variety of litigation scenarios together with a suite of options to enable a flexibility of approach on a case by case basis informed not just by the nature of the cause of action but taking into account the cost benefits of the various ADR options including the capacity to ameliorate any inequity in the respective representation of parties to a dispute which is a matter of ongoing relevance given the increasing numbers of self-represented litigants.

The MCV's success in the implementation of various statutory enactments that permit redress by way of damages or equitable relief is already well established. Although the conduct of matters arising under the Fences Act 1969 and the Fences Amendment Act 2014 is the most obvious, the MCV through the use of its judicial officers already administers other statutory schemes and has proved itself most able to do so.

A party may commence a proceeding in relation to a tree dispute by the commencement of a proceeding in a common law court relying on common law causes of action or a combination of the common law, equitable relief whether interim or final together with any relevant statutory relief for breach where jurisdiction is conferred upon the court by a particular enactment.

The MCV is a court that is subject to the Courts (Case Transfer) Transfer Act 1991 which enables the commencement of a proceeding in one court and the transfer up or down within the hierarchy of common law courts in Victoria when appropriate to do so such as where a limitation on monetary or other relief sought may prevail in a lower court.

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<sup>1</sup> S 1 (c) of the CP Act