

**Victorian Law Reform Commission
Neighbourhood Tree Disputes**

**Submission from Barwon Community Legal Service (BCLS)
Client experiences**

ABSTRACT

This submission shares some of the experiences of our clients in attempting to resolve a tree dispute with a neighbour. We have provided examples of the three main areas identified as barriers to the timely and appropriate resolution of these disputes. We support inquiry into alternative frameworks used in other state and international jurisdictions in efforts to encourage the resolution of neighbourhood tree disputes before judicial intervention becomes necessary. We view such changes as having a positive impact on the most vulnerable members of our community who cannot navigate the current process without assistance.

ABOUT US

Barwon Community Legal Service (BCLS) provides free legal advice and specialist casework services to people who live in the Geelong, Bellarine Peninsula, Surfcoast and Colac Otway regions of Victoria. Our catchment region consists of over 360,000 people with many pockets of extreme disadvantage.

We also provide community education and training directly to the community and to other community sector staff and government. We run community awareness campaigns on human rights and provide education that gives people the knowledge to self-manage their situation and assert their rights. We also contribute to policy and law reform work.

As a Community Legal Centre, we are called upon to provide legal advice in areas of law not provided by Victoria Legal Aid of which neighbourhood disputes is one. Clients who make appointments with our service for these matters are booked either into our three drop in services each week or our night service which operates on Tuesday nights.

Our service supports reconsideration of the current dispute resolution system and efforts to promote expediency and accessibility in the resolution of neighbourhood tree disputes.

OUR EXPERIENCE

Since April 2017 our service has provided legal advice to eight clients with neighbourhood tree disputes. The individuals who sought legal advice regarding these matters are largely the most vulnerable in our community being elderly or suffering from mental illness. Each client who has provided advice identified their income level as low with the majority receiving their only income from Centrelink.

Jeff's* new neighbours decided to develop the property they had just purchased. Jeff has three trees in his property all over 30 years old which provide considerable shade to his property. Jeff was concerned about the impact construction works next door could have on his trees so he engaged an arborist to produce a report. The report identified a tree protection zone to maintain the health of the trees and this was included in the permit his neighbours obtained from the Council. In January 2018 excavations began on his neighbour's property within the tree protection zone. Jeff sought assistance from the Council who despite being provided with photos, advised Jeff he had no proof. Victoria Police advised Jeff that it was a civil issue rather than a matter of criminal damage and the Dispute Settlement Centre was unable to successfully mediate the situation.

Jeff's situation touches on the three main issues identified as affecting our clients when it comes to neighbourhood tree disputes; his trees have already been damaged, the lack of Council enforcement and ineffective mediation. As illustrated, for many of our clients, seeking assistance from the Council, the dispute settlement centre or our service occurs after the trees have been damaged. Neighbourhood tree disputes in our experience are largely reactive, where works have been undertaken in a neighbour's yard that has adversely affected the health of a client's tree. Even when Jeff took a number of proactive steps in an attempt to safeguard the health of his trees, an Arborist report and its inclusion in a planning permit was not enough to stop the damage occurring.

The local Council in Jeff's area has been largely unhelpful in resolving this matter. The majority of the client's accessing our service for neighbourhood tree disputes have contacted their local Council prior to their appointment with us. While the Council appears helpful in advising people of their rights in relation to trimming overhanging limbs, they do not seem to be able to offer any practical advice to the vulnerable members of our community who do not have the physical capacity take these actions themselves.

Margaret* is concerned about her neighbour's tree which is currently encroaching on her property both under and over their adjoining fence. Margaret attempted to mediate the issue with her neighbours but they refused to participate. The Council has been to Margaret's house on a number of occasions to inspect the tree and have advised her neighbours that it needs to be removed. However, Margaret's neighbours have decided to ignore the Council and as the Council has no mechanism to ensure their directions are followed. All they can do is advise Margaret of her rights in relation to the branches and roots on her side of the fence. Margaret is elderly so cannot cut and return the branches herself nor can she afford to spend her aged pension on hiring someone.

Refusal to participate or unsuccessful mediation with neighbours, in the current legal framework leaves clients with only one option, initiating Court proceedings. Our service does not have capacity to assist clients taking these matters to Court. As a result, our service is left to refer clients to potentially expensive litigation lawyers to engage in a lengthy Court action for nuisance while the health of their trees continues to deteriorate or further damage is caused to adjoining fences or other structures.

In our submission members of our community would benefit from the adoption of a resolution framework similar to that of New South Wales with regards to these matters. The Trees (Disputes between neighbours) Act 2006 (NSW) together with the Land and Environment Court appear to provide more accessible and relevant courses of action in these types of disputes. Instead of having to bring a tortious action with the assistance of a litigation lawyer, individuals could represent themselves in a more obvious action for an injunction or damages. The NSW Land and Environment Court in 2014 recorded 69% of tree disputes involved both parties being self represented. Based on this data, it appears this avenue of dispute resolution would provide much more satisfactory outcomes for clients.

Further, due to the low socioeconomic status of the majority of our clients with neighbourhood tree disputes we invite this review to consider the introduction of reduced Court fees on the basis of financial hardship and safety from the award of costs Orders to allow greater accessibility to justice for the community.

CONCLUSION

The experience of our clients in resolving neighbourhood tree disputes highlights the need for a change of the current framework. We support any changes that will result in more timely and less costly resolution of these disputes that are accessible to the most vulnerable in our community.