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The Commissioner  
Victorian Law Reform Commission  
GPO Box 4637  
Melbourne 3001.

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12 5 MAR 2019  
[Handwritten initials]

Subject: Neighbourhood Tree Disputes

Dear Commissioner.

Yesterday I received from the Attorney General, the Hon Jull Hennessy, and a copy of your consultation paper, "Neighbourhood Tree Disputes", submissions to which are now closed.

Unfortunately, I was not aware of your paper until yesterday, even though I have corresponded with my local council months ago, to seek its help. Not even the Dispute Resolution Centre drew my attention to it. (That about sums up my opinion of the usefulness of the said centre). I do not have Internet facilities, indeed at 83 years, I know little about how to use it. Perhaps I might have found something there, had I known how to go searching such a matter.

For what it is worth, I will offer some thoughts, in the hope that my situation which possibly reflects that of others also, is considered.

Herewith is a copy of a letter to the Dispute Resolution Centre, (without attachments), which briefly describes my situation. Two Photographs are also herewith, one showing a huge limb, say 20-25 metres high and leaning in the direction of my house. The photo was taken after most of the cleaning up from a previous limb fall referred to in the attached letter. The second photograph shows a little of the fall referred to above.

I have quickly read through the consultation paper and I am please that the Commission is examining the matter of neighbours and trees. My observations are as follows.

In my opinion, the law in Victoria relating to tree disputes is totally unsatisfactory. Without wishing to appear rude, it seems that what legislation there is, was drawn up by lawyers for the benefit of lawyers and in reality offers no protection to persons and property that may be impacted and or

inconvenienced by a neighbour's tree. Indeed, that paper sent to me by the Dispute Resolution Centre seems to suggest that insurance will take care of it. As I have said in a letter to the Attorney General, an insurance company may be able to restore / rebuild a building damaged by a tree, but it cannot restore a broken body or human life.

Added to that, not everybody has insurance cover, such is not compulsory. Many pensioners are unable to afford insurance and if they are unable to do that, they will likewise be unable to afford the cost of mounting legal case. I am a pensioner and while I manage to scrape together enough to pay an insurance premium, I cannot possibly afford the risky business of mounting a legal case. People in this situation need to be protected. Currently we are offered nothing. This leads me to say that people who own trees must be made and held responsible for the said tree's care and welfare and **for any damage to a neighbour's person or property that might be caused by their tree.** Naturally the above includes the matter of compensation.

I think that the law needs to do away with all the excuses and chicanery that currently shifts the blame or part of it from the tree owner and onto the neighbour who has been impacted by it, (no pun intended).

A second and disturbing matter relates to the protection of human life.

Your discussion paper seems to me to be very deficient in this matter, rather, it seems locked onto the idea of a branch or two falling over a fence or a tree dropping a few leaves not to mention root damage. My situation is that I consider that I am in danger of a huge tree or part thereof, falling on my house and seriously injuring, maiming or killing someone on my property. Your office is quite welcome to visit my premises to view my concerns. There needs to be provision to enforce the safety and welfare of people who are living under the threat of injury or death occasioned by a neighbour's tree. I am sure that I am not alone in this matter; indeed, two other of my neighbours face a similar threat

If the Royal Commission in to Bushfires can recommend the protection of life and property, then I am sure your Commission can do likewise. I do not believe that anyone should be permitted to allow a tree which reasonably threatens a neighbour's life or wellbeing, to remain a threat.

Question 1, Yes I have been and am involved in a tree dispute with a neighbour. The latter remains unwilling to do anything about it.

Question 3/2 DSCV was scant with its advice and put the onus back onto myself. I consider that it was not much help and because it cannot compel people to take its advice, is a "toothless tiger".

Question 3/3. No and I cannot afford to go to court. Most pensioners cannot.

Question 3/4. I do not believe that the current laws are satisfactory. There is too much passing the buck and an apparent unwillingness to address the obvious issue. My opinion is that if I grow a tree or allow a tree to grow on my property, then I must be responsible for all matters relating to it, save where someone else has interfered with it.

Question 5/5 I think that it is wise to examine international thinking on this subject.

Question 6/6 If the existing system were allowed to remain then I think it would be a dereliction of duty.

Question 6/7 If a Statutory scheme were to be adopted in Victoria it needs to deal with the main issues and not be bogged down with side issue as seems to currently be the case. Neighbours who are impacted by a tree growing in an adjacent or nearby property are the ones who should be protected. Neither should they be expected to face expenses relating to damage caused by someone else's tree. The problem needs to be dealt with at its source and not foisted onto an innocent party. Your tree, your responsibility.

Question 6/8 All vegetation.

Question 6/9 No

Question 6/10 To entertain a requirement that an affected neighbour's land should adjoin the tree owners land is grossly unfair and would prevent people with a genuine case from pursuing it. My situation is brought about by a tree [REDACTED] [REDACTED] The current practice of subdivision of land often has a number of house lots converging to a point (as in my case). This means that roots and foliage easily extend to properties that are not adjacent and therefore cause damage.

Question 6/11 Where a tree is astride the boundary dividing two adjacent properties, then the responsibility should belong to the party who planted the tree and if that cannot be determined or was done by a previous owner, then both parties should share.

Question 6/12 I would like to see the matter of disputes relating to neighbour's trees separated entirely from the courts. If my tree is causing damage, then I should be responsible for it. The business of proportional blame should be avoided as it fails to acknowledge the fundamental cause. (Which of course is the neighbour's tree).

Question 6/13. Undoubtedly, the tree's owner. There also needs to be provision to bring about removal or reduction of a tree which reasonably threatens the life and wellbeing of a neighbour and or the neighbour's property.

Question 6/14 if leaves are the problem or factors affecting a neighbour's immune system, then the answer is yes.

Question 6/15 Perpetual nuisance or physical irritation.

Question 6/16 the new scheme should cover damage to garden (land?), property, **and to a neighbour's well being and life.** Limiting cover to property does not nearly go far enough.

Question 6/17 Future damage is an important concern and must be included under a statutory or any scheme. No one knows when a tree may fall, but trees do fall sooner or later and if they have such a history then that needs to be recognised, documented perhaps. It is all very well getting an arborist to give a report on a tree but the substance of the report is an opinion only and does not affect, guarantee or occasion anything. It is only a guide. Time should not be a limiting factor in this matter. Some trees are a thousand years old and when it falls, it falls.

Question 6/18 **It is my belief that there should be a determined effort to prevent injury and/or death of people and the damage of property.** The Bushfire Commission has dealt with this matter and I think that similar provisions should be considered here. **Candidly, I do not think your discussion paper canvasses the possibility of death or serious injury adequately and your attention to it is required urgently**

Question 6/19 All "innocent" people hurt as a result of contact with a tree or part thereof, should be protected by the scheme.

Question 6/20 Introducing a time factor my disadvantage a person where the symptoms of an injury have a slow onset.

Question 6/21 I have suggested that councils could take responsibility for matters relating to trees, but they would need to be made to face their responsibilities rather than deflect them as seems to be the usual case. Just keep it out of the courts. Your tree you pay.

Question 6/22-26 Don't understand the questions therefore I am unqualified to answer.

Question 6/22 Yes the right of abatement should remain, but a greater responsibility ought to be placed on tree owners to ensure that their tree/s do not threaten, cause annoyance or harm to neighbours. Tree owners ought to be made responsible for all matters relating to trees on their property.

Question 6/28 Councils might be used in this instant.

Question 6/29. Experts only give their opinions. We need to remember that

Thank you engaging in such an important matter

Yours faithfully

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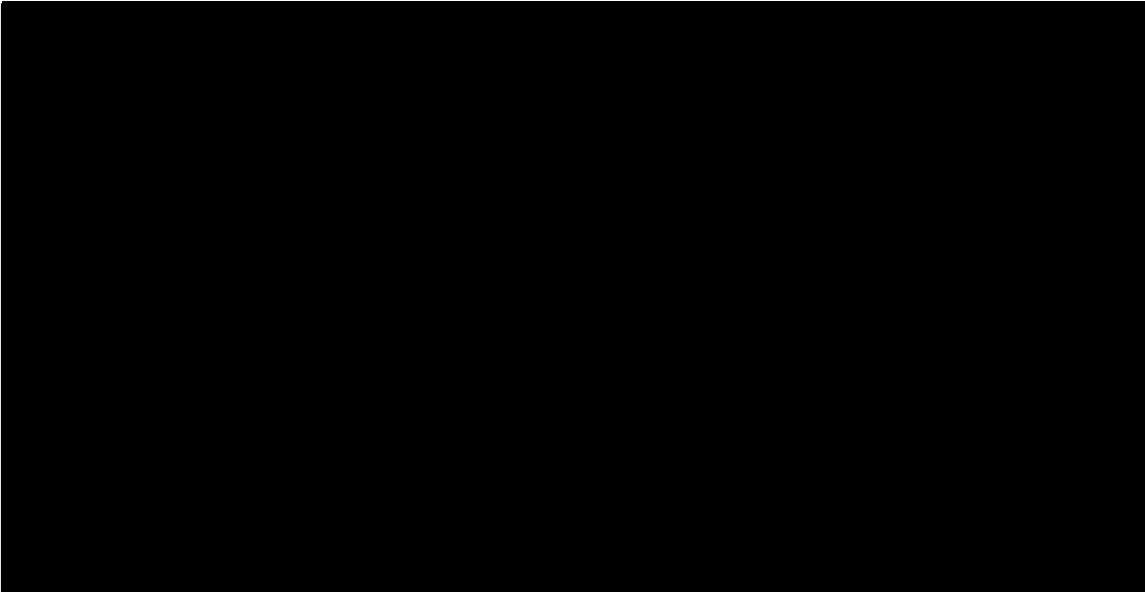
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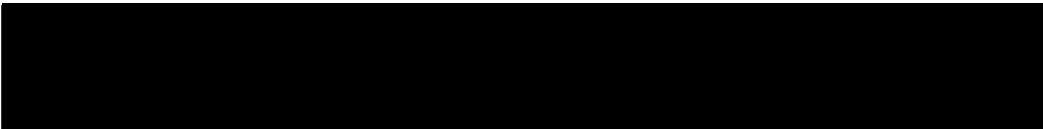
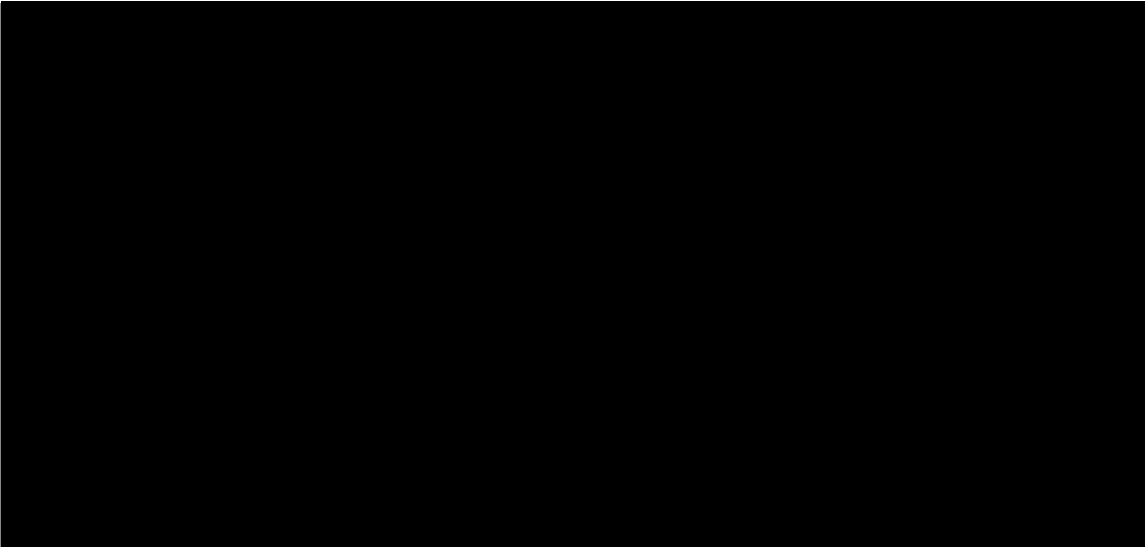
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