

## NEIGHBOURHOOD TREE DISPUTES

<b>Number</b>	7
<b>Name</b>	Ben Kenyon
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**1 Have you been involved in a neighbourhood tree dispute? What was it about and what was the outcome?**

As a consulting arborist, I am involved with neighbourhood tree disputes regularly. The outcomes vary, rarely in favour of a good outcome for the tree in dispute.

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

Most situations rarely end with mediation. Most are resolved or head straight through to court

**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 it is not satisfactory. Primarily due to the conflict between 'As right' property ownership common law and what is considered acceptable pruning and management practices for trees using AS 4373 2007 Pruning of amenity trees. There is consistent conflict between - pruning to property boundaries and what is considered acceptable for a living organism.

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

Yes, the Land and Environment Court in NSW Australia is a great example.

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

Improve the clarity around tree branches and tree roots crossing over property boundaries and what is acceptable pruning practices vs property ownership and nuisance rights

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

Yes. The overarching aim of the scheme should be to retain high value trees in the landscape and minimise costs to property owners to settle disputes. Trees of low value or trees that are clearly unsuitable in the landscape situation that they are located in, should not 'clog' up our legal system.

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

All vegetation should be covered.

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

No, a statutory scheme should not be limited to land in particular 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?**

The degree of proximity should be determined by the size of the tree and its required/relevant Tree Protection Zone (TPZ) as defined using AS 4970-2009 Protection of trees on development sites. Using this standardised measure would ensure that disputed issues could be rectified outside the TPZ without either the plaintiff or the tree owner required. Any disputed issue within the TPZ could have a significant impact on the health, structure and useful life of a tree.

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

Primarily using the Tree Protection Zone as specified in AS 4970-2009

<b>12 Who should have standing to bring a legal action in tree disputes under a new scheme?</b>
Anyone who is impacted upon by the calculated Tree Protection Zone (using AS 4970-2009) of the tree.
<b>13 Who should be liable for harm or damage caused under a new scheme?</b>
The tree owner
<b>14 Should interference (not causing damage) be actionable under a new scheme? If so what degree of interference?</b>
Interference should be actionable but would need to be further defined. The degree of interference would need to be substantial.
<b>15 What degree of damage should be sufficient to bring an action under a new scheme?</b>
Damage thresholds should be set to ensure that trivial matters are excluded from the scheme. Trivial matters would be considered by most as 'maintenance issues'.
<b>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?</b>
Damage to people, property or the land should be covered under a new scheme.
<b>17 Should future damage be actionable under a statutory scheme? If so, should a particular time period be specified?</b>
Future damage should NOT be actionable under a statutory scheme, unless it can be proven 'Beyond Reasonable Doubt' that future damage would occur.
<b>18 What degree of harm should be sufficient to bring an action under a statutory scheme?</b>
Harm requiring medical attention should be actionable.
<b>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?</b>

Anyone at all
<b>20 Should future harm be actionable under a statutory scheme? If so, should a particular time period be specified?</b>
Future harm should NOT be actionable under a statutory scheme, unless it can be proven 'Beyond Reasonable Doubt' that future harm would occur.
<b>21 Which court/s or tribunal should have jurisdiction over neighbourhood tree disputes under a statutory scheme?</b>
Not certain on the best jurisdiction but it appears that the VCAT model would work quite well for these types of disputes.
<b>22 What preconditions, if any, should parties have to satisfy under a statutory scheme before any orders are made?</b>
Genuine efforts have been made to mediate the dispute.
<b>23 What factors should be taken into account by the decision maker before making any determinations under a statutory scheme?</b>
The value of the tree in the landscape to the current and future owners of the land and surrounding landscape The degree of intervention required The degree of damage proven
<b>24 Should there be a hierarchy or relative weight for each of these factors? If so, how should this be determined?</b>
Yes, it should be determined by the age of the tree vs the age of the infrastructure around the tree (which was there first?)
<b>25 What types of orders should be available under a statutory scheme?</b>
Rectify, mitigate or maintain the situation. Recovery of costs should also be available.
<b>26 How should these orders be enforced?</b>
Through the relevant local authority (LGA) and their local law enforcement officers.

<b>27 Should the common law right of abatement remain available to affected neighbours under a statutory scheme? Should it be modified in any way?</b>
I'm unqualified to comment
<b>28 To what extent, if any, should orders made under a statutory scheme override or modify:(a) local laws?(b) other legislation?</b>
Not sure
<b>29 What factors should be taken into account in relation to the appointment or qualifications of experts giving evidence about neighbourhood tree disputes?</b>
<p>The guidelines set out in AS 4970-2009 Protection of trees on development sites should be followed. The standard specifies that a suitably qualified person is one that has an AQF Level 5 in arboriculture as the minimum.</p> <p>The Coroners Court 10 Sept 2015 Patiya May Schreiber also recommends 'preferably AQF Level 5, but on occasions could be AQF Level 4. I recommend a minimum of AQF Level 5.</p>
<b>30 Should the decision-making body issue guidelines or model reports to guide expert evidence?</b>
Absolutely.
<b>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?</b>
Yes
<b>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?</b>
Yes
<b>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?</b>
Transfer of title

<b>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?</b>
Not sure
<b>35 Should a searchable database of orders relating to trees be made available in Victoria?</b>
Yes
<b>36 What types of resources should be made available to community members to complement a statutory scheme?</b>
Legal assistance
<b>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?</b>
Not sure
<b>38 Are there any other specific features of a statutory scheme that the Commission should consider?</b>
No
<b>39 Do you have an alternative option for reform that you would like to see introduced in Victoria?</b>
No