

TITLE: THE NOT SO SIMPLE PROBLEM OF NEIGHBOURHOOD TREE DISPUTES – VICTORIAN LAW REFORM COMMISSION INQUIRY

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NEIGHBOURHOOD TREE DISPUTES

In this issue, neighbourhood tree disputes have long been the cause of otherwise friendly neighbours falling out with unpleasant consequences. Help may be on its way. Confusing minimum garden area requirements were addressed in Amendment VC 143. The Tribunal considered the question of what constituted the area, employing the *Interpretation of Legislation Act 1984*, in a subsequent decision. Ten permit requirements, three overlays and 18 relevant scheme policies and provisions were tackled by the Tribunal with respect to a rural property in Healesville. The Supreme Court upheld the Tribunal's decision. (Numbers in square brackets – e.g. [21] - refer to paragraph numbers)

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Whilst tree and boundary fence disputes between neighbours can appear at first blush to be small beer compared to multi-million dollar apartment complexes, the angst, aggravation, and bad blood that arises between neighbours caught up in a dispute of this sort can equal if not surpass the tension and frustration that occurs when faced with a multi-level high rise. The Victorian Law Reform Commission (VLRC) has undertaken an inquiry into neighbourhood tree disputes (February 2019), the recommendations of which have yet to be made public. According to the Dispute Settlement Centre of Victoria (DSCV), tree disputes come in third after fences and antisocial behaviour, by way of complaints it receives.

As we know, one person's meat (or fish or tofu) is another's poison. A row of silver birch trees for example, planted close to a boundary fence, may have roots that travel into adjoining land in search of water, cause cracking of paving, walls, swimming pools, encroach into storm water pipes, sewer pipes and so on. The same trees may cause an allergic reaction in neighbours; a branch may fall into an adjoining property and injure a child; the neighbours might take matters into their own hands and lop the tree without consultation.

The neighbours have a right to abate the offending aspects of the trees to the boundary line, but in doing so might make matters worse. Trimming trees or cutting roots without expertise can not only injure or weaken a tree, but destroy its aesthetic quality (we have all seen the sad plane trees around Melbourne pruned to grow either side of overhead power lines).



The VLRC in its consultation paper (December 2017) observed that the rights and responsibilities of tree owners and their neighbours, and their avenues of recourse, are largely governed by the common law: the tort of nuisance is the most relevant legal principle although negligence or trespass may also be applicable. The current law is confusing, expensive to enforce and ineffective.

The Radio National Law Report of 20 February 2018 (transcript available from www.abc.net.au) discussed "the state's confusing and outdated laws", and the Law Reform Commission's aim to bring them into line with those in NSW and Queensland

In answer to the question:

“Do you think the current state of the laws in Victoria are in some way contributing to a degree of confusion, and even the types of conflict that we are seeing between neighbours when it comes to disputes over trees?”

the then Chair of the Law Reform Commission and former Supreme Court Judge (Philip Cummins) replied:

“I do not think the law contributes to conflict, but it undoubtedly contributes to confusion and the confusion in turn prevents conflict which is pre-existing being properly resolved, because in Victoria the common law, that is judge-made law, is in three categories: there's negligence, there's nuisance, and there's trespass. And if you get through that maze then your local laws are also in three categories: there's the Fencing Act, there is planning laws and there is health laws. So there's a myriad

of levels and complexities There's no one clear law, there is no one statute
And one of the major issues we are looking at is how can we create a clear pathway
for citizens who are affected by these problems which is fair and just, much cheaper
and more accessible and more modern.”

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