



TREE ISSUES IN VICTORIA: FREQUENTLY ASKED QUESTIONS

I want to prune or remove a tree on my land. What do I do?

Generally, you can cut it back whenever you want unless it's protected by an environmental overlay. Your local council can tell you if it is and if so, you'll need a permit.

A neighbour's tree is overhanging my yard. What can I do?

Firstly, check with your local council, to see whether the tree is protected or subject to an environmental overlay. If it is, you need a permit to cut it back. If it's not protected, or you have a permit, you can cut back any leaves, branches or roots overhanging the boundary line. This is known as the right of abatement, and is done at your cost, unless otherwise agreed. Unless you agree otherwise, you must return the branches & leaves to your neighbour as they remain their property.

It's best to engage your neighbour along the way. Take the opportunity to explain the laws. Tell them your plans and where you'll put the cut branches. This should hopefully prevent disagreements down the track and may even give you a better result in the long run.

Can I ask my neighbour to contribute to the maintenance of their tree?

Yes, and you may find they're perfectly happy to share the costs. They may even be able to propose a solution that saves you both time and money.

Can I force my neighbour to remove or cut back their tree?

Not unless you bring about an action of [private nuisance](#), which means that someone's act or omission substantially interferes with your use and enjoyment of your property. You need to apply to court for a private nuisance claim, so get legal advice first. If you do proceed, you need to show the nuisance is significant and unreasonable.

When deciding on your matter the court will consider:

- your neighbourhood's general environment
- where the interference took, or is taking place
- what's causing it
- how long it's been happening and if it's ongoing
- the impact on you
- if the interference was there when you moved in
- how useful or necessary the activity causing the interference is
- what reasonable people would think of the interference.

Using common sense, the court will also weigh the inconvenience or impact of the interference on you against the cost and effect of having your neighbour modify or stop their activities.

It's important to recognise that living in a neighbourhood means that occasionally there will be competing interests or activities from people nearby. The court takes a pragmatic look at these,

recognising that some noise, annoyance, inconvenience and discomfort are likely to occur wherever people live.

If I don't want to go to court what else can I do?

Speak to us (DSCV) [about mediation](#). It's free, confidential and we work with parties to help them resolve their disputes without the need to go to court. Get in touch with a Dispute Assessment Officer via our [contact page](#) or call us on 1300 372 888. We can arrange for both parties to meet in a neutral environment, along with two trained mediators, with a view to reaching a resolution.

Even if you think that mediation is not appropriate, a DSCV staff member may be able to provide a referral, or advice to help you resolve things.

Why doesn't my neighbour have to pay for the maintenance of their trees?

Trees in Victoria are only covered under general property and common law. The courts have shown reluctance to create new obligations for tree owners as this would substantially change the existing rules we have in Victoria.

A neighbour's tree is causing damage to my property. What can I do?

It's likely your neighbour is liable for the damages. Refer to the Fences Act^[1] for the general obligations on people to pay for damaging a boundary fence. Other damage like roots cracking pipes, foundations or pathways is usually covered under property law.

It's always going to be better to try to negotiate a solution first. Going to court is very expensive and can take a long time, so reaching a private agreement will avoid a lot of hassle. You can speak to us (DSCV) [about mediation](#). It's free, confidential and we work with parties to help them resolve their disputes without the need to go to court. Get in touch with a Dispute Assessment Officer via our [contact page](#) or call us on 1300 372 888. We can arrange for both parties to meet in a neutral environment, along with two trained mediators, with a view to reaching a resolution.

It's a good idea to get together as much information as possible so you can have an informed discussion with your neighbour. This could include:

- an arborist's report showing that the tree caused the damage
- photos of the damage
- a quote for the costs of removal or repair.

Remember, if you were to attempt mediation or if you decided to go to court, you'd need most or all of this anyway. Plus, it's not unreasonable for the other party to want it.

The adjacent tree drops debris onto my property. What can I do?

Common sense and court law acknowledge that trees drop leaves, bark, sticks, flowers, fruit and sap as part of their normal life cycle and that this doesn't justify excessive tree pruning or removal. In other words, this isn't usually considered a private nuisance.

In this instance, have a chat with your neighbour about whether they'd be willing to work with you to maintain the tree, or cut back any part of it that encroaches on your property yourself.

The large trees my neighbours have planted will overshadow/block views from our property. What can I do?

In Victoria, there are no specific rules or regulations that can force a property owner not to plant big trees and this is usually something for neighbours to negotiate and agree upon themselves. If

you're still not happy and are considering bringing a [private nuisance](#) action, you'd be best to get independent legal advice first.

The council owns a tree that's overhanging or causing damage to my property. What can I do?

Start with a call to them discuss the issue. From there they might send an arborist out to assess it and choose to cut it back. Remember, as a property owner, you still have the right to cut back any part of the tree that encroaches on your property.

[\[1\]](#) Fences Act 1968 as amended by the Fences Amendment Act 2014, which brought in changes from 22 September 2014.