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Fencing disputes making it difficult for some Victorians to “love thy neighbour”

With the ever-increasing growth of new estates and housing developments in Victoria, it is no surprise that the number of neighbour disputes over fencing has skyrocketed.

In 2016, fencing disputes were the single most common matter brought before the Dispute Settlement Centre of Victoria (“DSCV”), which provides a free mediation service for neighbours.

One of the most common causes of disagreement are about property boundaries, with a number of parties claiming that their neighbour has built the fence over the property boundary and are therefore “encroaching” on their land.

If you suspect that your neighbour has a fence that encroaches on to your side of the property boundary, you need to take action immediately. Your neighbour could be planning to make an adverse possession claim for your land. If five years have passed since the initial encroachment, you need to contact a lawyer as soon as practicable, so that they can provide adequate legal advice.

On the other hand, when a fence has recently been moved from its correct position, here are some tips:

- We always recommend that you communicate your concerns to your neighbour first, and try to resolve any fencing or other issues informally. (Note that you are going to be living next to them, so it is best that you remain on good terms!)

Words to the Wise

**“Where we love is home,
home that our feet may
leave, but not our hearts.”**

— Oliver Wendell Holmes Sr.

- If your neighbour is resistant to discussing the issue or has opposing views, then you will need to take formal action.
- It is a good idea to get the official survey or subdivision records of the property to make absolutely sure that the boundary you are claiming is the correct one. Over the years some property boundaries can change whether due to mutual agreement of previous neighbours, or careless work by builders erecting fences that may alter the original boundary between the two properties.
- If necessary, engage the work of a professional surveyor to determine the exact property boundaries.
- If surveyor’s reports show that the fencing is encroaching on your property, think about taking advantage of the free services of the DSCV before taking action in a Court. The DSCV can provide you with telephone advice on the matter and set up a formal mediation between you and your neighbour. You must note that the DSCV does not provide binding resolutions, nor can it compel your neighbour to attend the mediation. Nevertheless, according to DSCV, 85% of parties who attend mediation at the DSCV, report that they are satisfied with the outcome of the services, and this method will save you and your neighbour significant time and costs.
- Alternatively, you may choose to take action in the Magistrates Court, which has power to make binding orders under the Fences Act 1968 (Vic). This

In this issue...

Fencing disputes making it difficult for some Victorians to “love thy neighbour”

“Special Skills” and Family Law

New Road Laws in Quest to Protect Emergency Workers

Client FUNction

Want more news?

FastFACTS

Did you know...

If you work in the city, our Melbourne office is ideally positioned to meet your legal needs. For a convenient lunch time appointment or consultation, give us a call.

If you would like to receive an electronic version of Legal Insight, please:

- send an email to office@hutchinsonlegal.com.au
- call Tristan Tottenham of our office on **9870 9870**
- write to us at PO Box 450, Ringwood 3134

option may be costly and there is no doubt court action is likely to have a negative impact on the relationship between you and your neighbour.

If you are party to a fencing dispute, the Hutchinson Legal property team can help! You can contact us on (03) 9870 9870 for advice, and if necessary, guide you through the dispute resolution process up to and including action in the Magistrates Court.

“Special Skills” and Family Law

Historically, Family Law Courts have provided for property distributions which significantly favour a breadwinner who has utilised their “special skills” in a high wealth relationship. The principles regarding “special skills” contributions have long been a contentious issue in Family Law, and recent cases suggest that Australian Family Law Courts are beginning to move away from this historical approach to one which gives more weight to the contributions of a homemaker.

In the case of *Mallet v Mallet* [1984] 156 CLR 605, the High Court of Australia stated that there is no presumption that the property of a marriage will be divided equally between the Husband and Wife. Instead, it is required that each matter be decided on its merits.

If you would like to learn more about the consideration of “special skills” in property distributions, you can read the full article on our website at <http://www.hutchinsonlegal.com.au/special-skills-and-family-law/>

New Road Laws in Quest to Protect Emergency Workers

In response to emergency workers expressing their concerns about the dangers they face while trying to get patients into ambulances, the Victorian Government has

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You are invited to:

Movie: **‘Captain Underpants’**
+ Candy Bar Trio refreshments
+ Free show bags for children!

Venue: **Hoyts, Eastland, Ringwood**

Date: **Thursday, 14 September 2017**

Time: **6.30pm arrival for a 7pm start**

RSVP: 9870 9870 or
tristan@hutchinsonlegal.com.au

Places are limited – please reply early to avoid disappointment



made the decision to introduce new rules for drivers who are passing emergency vehicles that are on the side of the road with their lights or sirens on.

The new rules, which came into force on 1 July 2017, require that drivers passing an emergency vehicle that has its sirens sounding or lights flashing must slow down to 40km/h. Drivers who fail to reduce their speed will face an on the spot fine of \$277. If the driver chooses to dispute this fine, they may take the matter to court, but may also face a \$793 penalty. Drivers who breach the new laws are not, however, subject to a deduction of demerit points.

These new laws mirror those introduced in South Australia in 2014, which forced drivers to slow down to 25km/h when passing emergency vehicles, but VicRoads has expressed concerns that the law has been rushed through without an adequate education period for Victorian drivers, and without proper consideration being given to the ability of larger vehicles such as trucks to dramatically reduce their speed without sufficient notice.

Up to 20 emergency service workers have died after being struck by a vehicle while attending to a situation on Victoria’s roads. It is hoped that this new law will provide a heightened level of safety for emergency workers and will allow them to do their jobs, without unnecessarily putting their lives at risk.

Want more news?

For further articles which may be of interest, go to <http://www.hutchinsonlegal.com.au/category/news/>

Articles recently added to our website include:

1. Great news for first home buyers at <http://www.hutchinsonlegal.com.au/great-news-for-first-home-buyers/>
2. Proposed reforms to the Residential Tenancies Act 1997 (Vic) at <http://www.hutchinsonlegal.com.au/proposed-reforms-to-the-residential-tenancies-act-1997-vic/>
3. Personal Property Securities Register – Transitional Grace Period at <http://www.hutchinsonlegal.com.au/ppsr-transitional-grace-period/>



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FastFACTS

105,237

The number of people in Australia who are currently homeless

10 million

The approximate number of dwellings in Australia in 2016

300

The approximate number of different languages spoken in Australian homes

Visit us at hutchinsonlegal.com.au

Clients should not act solely on the basis of material contained in this newsletter because the contents are of a general nature only and may be liable to misinterpretation in particular circumstances. Changes to legislation can occur quickly. Do not act on any of the contents of this newsletter without first obtaining specific advice from a lawyer.