

LAW REFORM COMMITTEE

Parliament of Victoria

Wednesday, 11 November 1998

New Fencing and Boundary Laws for a New Millennium

Review of the Fences Act 1968

The all party Victorian Law Reform Committee today released its report on its Review of the Victorian Fences Act. The Committee has recommended wide ranging reform to the law of fencing and other related matters in an effort to reduce the level of neighbour disputation and to improve efficiency in the operation of the Act. The report is available on the committee's internet website at www.lawreform.org.au

The committee Chairman, Mr Victor Perton, MLA (Doncaster) said that the inquiry was the most thorough and wide-ranging review of fencing and boundary law conducted in Victoria in the past thirty years.

'The report is significant in that the committee has accumulated, analysed and considered the current state of fencing laws throughout Australia. In the course of the inquiry, it has become obvious that it is impossible to deal with fencing issues in isolation. Boundary concerns arising from encroachments on land by buildings, footings and other structures, adverse possession rights between neighbours, the situation regarding retaining walls and rights of support of adjoining landowners (both above and below ground) are all fertile areas for disagreement and dispute' Mr Perton said.

The fencing review subcommittee Chairman, Hon. Carlo Furletti, MLC (Templestowe Province) said: 'At the outset, the committee did not fully appreciate the intensity of the feelings and emotions that emanate from fencing and neighbour disputes. It became obvious very early in the inquiry that all fencing disputes are neighbour disputes. Many neighbour disputes merely use fencing and boundary issues as the climax of an accumulation of minor complaints or serious differences between neighbours, which are unrelated to fencing'.

The committee's report addresses a number of important and difficult issues involved with dividing fences and boundaries. It has recommended the creation of a new Dividing Fences and Boundaries Act which would extensively amend the existing law and transfer jurisdiction in fencing disputes from the Magistrates' Court to a 'Neighbour Disputes Division' of the Victorian Civil and Administrative Tribunal. The Tribunal would have extensive powers to deal with all aspects of dividing fences and some other areas of dispute involving property boundaries.

Other matters dealt with in the report include the provision of information to the public regarding fencing law, the use to which land is put, considerations of privacy, safety, building on boundaries and planning in the context of dividing fences.

‘Problems associated with Crown immunity and fencing of public lands, confusion as to the applicability of the Fences Act to municipal councils, some government departments and State owned enterprises, and the conundrum of fencing in the body corporate environment all called extensively on the committee’s collective experience in finding workable solutions in a complex area of law’ Mr Furletti said.

Rural fencing issues received special attention during the inquiry. The report makes recommendations concerning vermin-proof fences, signage on electric fences, the liability of occupiers of Crown land to contribute towards rural fencing costs, clearance of land for fence protection and the appointment of a Rural Ombudsman to investigate complaints by owners of private land concerning the decisions of government officials in respect of disputed vegetation clearance for fence construction.

Mr Furletti said: ‘The committee was surprised at the breadth and scope of the many submissions received, which drew its attention to the diversity of the nature of fences and the complexity of issues which could give cause for dispute.

The inquiry received sixty-seven submissions and took evidence from forty-eight witnesses including members of the public, farmers, officers of government departments and agencies, representatives of the fencing and housing industries, municipal officers, property owners, lawyers, arbitrators and mediators, academics, surveyors, engineers, planners, real estate agents and property consultants.

The committee Chairman Mr Perton said: ‘So often the work done by the Law Reform Committee is highly technical. In conducting this inquiry the committee has been involved with issues that affect ordinary people. I believe that the result is an excellent report, which provides sensible solutions to difficult problems’.

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