



Neighbours, the law and you

Your guide to
neighbourhood
laws in Victoria

Your guide to neighbourhood laws in Victoria

This guide gives information on how to be a good neighbour, and explains your rights and responsibilities in relation to common issues that arise between neighbours, such as animals, noise, fences and trees.

This is one in a series of guides on local laws published by Victoria Law Foundation. Other titles are:

- *Dogs, cats, neighbours and you*
- *Parking, the law and you*

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www.
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Being a neighbour

It is important to know your legal responsibilities in order to avoid problems with your neighbours.

Neighbourhood issues – the basics


We all have the right to use and enjoy our property as we please as long as we follow the law and respect other people's property. This applies to tenants as well as property owners.

Living as a neighbour means that there will be times when what you do on your property will affect your neighbour, just as what your neighbour does can affect you.

Constructively working out any problems together with your neighbour is the best way to maintain a good relationship with them so you can deal with any future issues.

Whatever the problem, in most cases your best option is to try to resolve it by talking with your neighbour and sorting it out in a friendly and informal way. This approach is most likely to result in the best solution for you both.

The Dispute Settlement Centre of Victoria website (www.disputes.vic.gov.au), run by the Victorian government, provides useful advice and resources.

An aerial photograph of a suburban neighborhood. The houses are arranged in rows, separated by streets. The roofs are mostly grey and brown. There are green lawns, some with swimming pools, and a few cars parked on the streets. The overall scene is a typical residential area.

**For hints on
how to resolve
disputes, go to
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Common neighbourhood problems

This section covers common neighbourhood problems, the legal responsibilities involved and how you can resolve neighbourhood disputes.

Animals

Owners of pets and other animals are responsible for ensuring that they do not cause problems for their neighbours. For example, if you own a dog or a cat you must make sure that they:

- do not wander onto other people's property without permission, and
- do not make excessive noise or otherwise cause an unreasonable annoyance to your neighbours.

Who is responsible for enforcing laws about pets?

Local councils are largely responsible for enforcing state and local laws relating to pets. If you have a problem or a question relating to a neighbour's animals, or your own, check with your council to find out which laws apply in your local area.

Councils can make laws in relation to a range of animals, including dogs, cats and birds. The types of laws that councils can make include:

- how many animals you can keep
- where pets can be located and are allowed to go
- curfews and time restrictions for dogs and cats
- the management of animal droppings.

More detailed information relating to dogs and cats can be found in the Victoria Law Foundation companion guide *Dogs, cats, neighbours and you*, available at www.victorialawfoundation.org.au/publications





Animals in rural areas

As an animal owner and landholder in rural Victoria, there are a number of prohibitions and responsibilities you need to know about:

Wandering livestock

You must not allow any livestock to wander off your property. They can injure themselves and other animals, cause vehicle accidents and damage property. You can be liable for any harm your wandering animal has caused. Also, in some circumstances an authorised council officer can impound wandering livestock. Call your local council for more information.

Pests and prohibited animals

You are responsible for controlling animal pests like foxes and rabbits, and you are not allowed to keep prohibited animals. Call the Victorian Department of Economic Development, Jobs, Transport and Resources on (03) 9651 9999 for information about which animals are prohibited.

Disposal of carcasses

You must properly dispose of animal carcasses, including the carcasses of animals that have died during bushfires, floods or droughts.

For more information, call the Environment Protection Authority (EPA) on 1300 372 842 or your local council.

Common laws relating to dogs and cats

It is important to know about your legal obligations regarding the registration of dogs and cats, where they can go and how they can behave, as well as your responsibilities if they harm people or their property.

Registration

Dogs and cats must be registered each year with the local council and must wear identification tags.

Wandering dogs and cats

If a dog or cat wanders onto your property without permission on more than one occasion, it can be seized by you or an authorised council officer. But you should always try to talk to the owner of the dog or cat and discuss your concerns with them to give the owner a chance to fix the problem.

Barking and other forms of nuisance

If a neighbour's dog or cat causes a nuisance, you may be able to complain about it to your local council. Nuisance can include excessive noise, or a dog or cat that injures, or endangers the health of, a person. Noise, such as barking, can be considered a nuisance if it is loud and persistent or occurs at unreasonable times.

Resolving problems with animals

If a neighbour's dog, cat or other animal is causing you problems, the best thing to do is talk to your neighbour about it. They may not realise what is happening and may be able to take steps to fix the problem easily. If you still cannot resolve your issue then speak to your local council and ask them for assistance.

Making a formal complaint

You can make a formal complaint to your local council if a neighbour's animal is causing you problems. Generally, in order to make a complaint about a dog's or a cat's behaviour it must be unreasonable and persistent. If the animal's behaviour is against the law, your council will be able to take action to resolve the issue.

Want more information?

Visit your local council's website for useful information about keeping pets and other animals.

Noise

Noise is a normal part of living in urban and regional areas, but it can cause conflict between neighbours. As a neighbour it is important to know that if the noise is excessive or occurs at unusual hours it might be illegal. Where you live and the zoning of your property will make a difference to the laws that apply to you in relation to noise. If you live near a commercial zone or in a rural area, some noise from factory machinery or farm equipment will be unavoidable. In other areas, the basic rule is that neighbours must not interfere with each other's health and wellbeing or make unreasonable noise.

The table on page 13 outlines the times when certain types of residential noise are not allowed; during these times, these types of noise will automatically be considered unreasonable and prohibited. Different guidelines apply to commercial noise.

It is important to note that even if certain types of noise are allowed under the table on page 13 they may still be considered unreasonable because of the time, place or circumstances in which the noise is being made or because of its volume, intensity or duration.



Resolving problems with noise

If your neighbour is making noise and it is not allowed under the restrictions on page 13 then the best thing to do is to raise the issue with your neighbour first and try to resolve it, but this may not always be possible.

Making a formal complaint

The organisation that you contact to make a complaint will depend on the type of noise and its source.

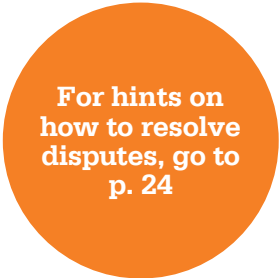
Residential noise

Residential noise comes from many different sources, including loud parties, home renovations and music. You can complain to your local council about unreasonable noise and noise that is interfering with your health and wellbeing (known as nuisance noise).

If the problem is urgent, such as a loud party in the early morning hours or where your neighbours are being aggressive as well as noisy, you can call the police for assistance. Both local council officers and police officers can direct people to stop making unreasonable noise. These directions can stay in force for up to 72 hours. If someone does not comply with a council or police direction about noise, they can be given an on-the-spot fine for breaking the law.

For more information about residential noise, see the Environment Protection Authority (EPA) publication *Annoyed by noise?* available from its website: www.epa.vic.gov.au/your-environment/noise/noise-publications

You can also contact your local council or visit their website.



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Commercial noise, including noise from entertainment venues

Indoor venue – When the disturbing noise is coming from an indoor venue, such as a pub, restaurant or nightclub, you can make a complaint to either your local council or the police. The police have the power to require a venue to reduce the noise between midnight and 8:00 am.

Large outdoor music event – If you are being affected by noise from a large outdoor music event, you can report it to the Environment Protection Authority (EPA), which enforces the noise limits for these functions. See the EPA's website (www.epa.vic.gov.au) for more information.

Industry

For noise coming from industries, you can make a complaint to the EPA. The EPA has the power to investigate these kinds of complaints and enforce noise limits against industries. You can make a complaint about this kind of noise by using the EPA Pollution Hotline: 1300 372 842.


Shops or small commercial premises

If you have a problem with noise coming from shops or other small commercial premises near where you live, you should make a complaint to your local council.

Want more information?

Go to the EPA's website (www.epa.vic.gov.au) where you can also download useful publications about noise (www.epa.vic.gov.au/your-environment/noise/noise-publications).

Residential noise restrictions

Items	When you cannot use them 
A motor vehicle (except when moving in or out of your home), lawn mower or other equipment with an internal combustion engine	Monday to Friday: 8:00 pm–7:00 am Weekends and public holidays: 8:00 pm–9:00 am
An electric power tool , chainsaw, circular saw, gas compressor, pneumatic power tool or hammer, or similar impacting or grinding equipment	Monday to Friday: 8:00 pm–7:00 am Weekends and public holidays: 8:00 pm–9:00 am
A domestic air conditioner or evaporative cooler, heat pumps and other similar pumps, domestic heating equipment and a domestic vacuum cleaner	Monday to Friday: 10:00 pm–7:00 am Weekends and public holidays: 10:00 pm–9:00 am
A musical instrument and any amplified sound system, including a stereo, radio, television and public address system	Monday to Thursday: 10:00 pm–7:00 am Friday: before 7:00 am and after 11:00 pm Saturday and public holidays: before 9:00 am and after 11:00 pm Sunday: before 9:00 am and after 10:00 pm
Any electric equipment or appliance not listed above, including gardening equipment	Monday to Friday: 8:00 pm–7:00 am Weekends and public holidays: 8:00 pm–9:00 am

Fences

If you own a residential property, you and your neighbour are responsible for building and repairing a sufficient fence between your homes. What amounts to a sufficient fence depends on a range of things, including the nature of your existing fence, privacy issues, the types of fences in your neighbourhood, local council policies, and planning and building laws.

If you are renting you are generally not responsible for the fence between you and your neighbour's property. That is the responsibility of your landlord.

Who is responsible for the cost of a fence?

Generally each neighbour pays half the cost of building or repairing a sufficient fence. But there are exceptions, as the table on page 17 shows.

Agreeing on building and repairing fences

Before you start building or repairing a fence you need to attempt to get your neighbour's agreement. If you just go ahead you will be liable for the entire cost of the fence.

You can just speak to your neighbour and verbally agree, but if you want to put your plans in writing you can use a 'fencing notice'. A fencing notice formally notifies your neighbour of your plans, outlines all the necessary details and starts a process to allow you to build or repair your fence if certain steps have taken place.

If you do decide to speak to your neighbour, make sure you explain the type of fence you are proposing, its location, the estimated cost and who will pay what. And make sure you give your neighbour time to think about these issues and the chance to plan for any costs involved.

Once you have come to an agreement, you can go ahead and build or repair the fence.



Getting a quote

If you are trying to get your neighbour's agreement on a fence, it is a good idea to get a written quote from a fencing contractor about the cost of building or repairing the fence. If your neighbour agrees to the quote, each of you should sign a copy of the quote and write on it the amount you have agreed to pay – this will reduce the risk of any later disputes. If your neighbour thinks the cost is too high, you should get another quote.

Fencing notices – when you need to use them

A 'fencing notice' is a legal document that can help you come to an agreement with your neighbour about proposed repairs or building a new fence. You can give a fencing notice at any time.

If you speak to your neighbour and they do not agree to your proposed fence, then you need to give them a fencing notice. As discussed above, a fencing notice starts a series of steps, which, if met, will allow you to move forward with repairing or building your fence.

A fencing notice must include specific information and follow certain steps. It can be a letter or you can use the standard fencing notice form available from the Dispute Settlement Centre of Victoria's website (www.disputes.vic.gov.au/information-and-advice/fencing/notice-to-fence). The type of information it must contain includes the type of fence or the planned repairs; who is going to do the work; the estimated cost, backed up by a quote; and how much you are asking your neighbour to pay. For more about what fencing notices involve, visit the Dispute Settlement Centre of Victoria's website (www.disputes.vic.gov.au/information-and-advice/fencing/notice-to-fence).

If your neighbour disagrees with the fencing notice within 30 days of getting it, then at the end of the 30-day period either of you can take action in the Magistrates' Court of Victoria to resolve the dispute.

Depending on the issue, the court can make orders about whether the fence is needed, the kind of fence to be built or repairs to be made, where it should be built, who should do the work and who should pay what. Going to court can be expensive and time consuming and should be a last resort.

If your neighbour does not respond to the fencing notice after 30 days from when they received it, you can build or repair a fence without their agreement. If you want them to pay some of the cost you will have to take action in the Magistrates' Court of Victoria for an order to get them to pay. But going to court can be costly, and the outcome can be uncertain.

Want more information?

The Victorian Department of Justice and Regulation website has useful guides to fencing laws. Visit www.justice.vic.gov.au/home/justice+system/laws+and+regulation/civil+law/fencing+law+in+vic

Where can I get help?

The Dispute Settlement Centre of Victoria (www.disputes.vic.gov.au) offers free and confidential help for neighbours trying to resolve fencing disputes. You can call them on 1300 372 888.

Who pays for building or repairing fences

The general rule is that each neighbour pays half the cost of building or repairing a sufficient fence. But there are some exceptions, as listed in this table.

The situation	Who pays what	\$\$
You want a more expensive fence built	You must pay the extra amount	
You have damaged a fence intentionally or by being negligent	You must pay the entire cost of repairing or replacing the fence	
You make urgent repairs to a fence	In most cases you can get back some of the cost of the repairs from your neighbour	
You have not tried to reach an agreement with your neighbour	You must pay the entire cost of the fence or repairs	
Your property borders land owned by the federal or state government	In most cases you will be responsible for the full cost of the fence	
The fence will divide farming and residential properties	Farmers only have to pay half the cost of a fence that suits their needs (usually an agricultural fence)	

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Trees

Most disputes about trees involve overhanging branches or roots reaching onto a neighbour's property. These can cause damage to property and injury to people.

You and your neighbour's rights concerning trees will depend on the planning schemes and local laws relating to trees in your area. Councils have local laws and planning schemes that cover issues such as:

- trees overhanging the footpath – generally only allowed over a certain height as specified by the council
- tree protection schemes – some councils specify that certain significant trees or trees over a certain size cannot be cut without permission
- nature-strip and parkland trees – generally, residents are not permitted to prune these trees.

In some areas, a council permit is required to prune overhanging branches or cut roots that are coming onto your land from a neighbour's property. Your local council will be able to tell you whether or not you need a permit.

If you do not need a permit, then you will usually be entitled to cut off branches and dig up roots that are reaching onto your property. However, if you do want to prune any branches or dig up any roots of a neighbour's tree you:

- cannot enter your neighbour's property without permission
- must only prune or cut back the branches or roots that are on your property
- must not cause any unnecessary damage to the tree.



Clearing vegetation in rural areas

If you believe that trees or vegetation on your neighbour's property are a bushfire risk, contact the Country Fire Authority or your council's Municipal Fire Prevention Officer. They can assess the risk and if necessary issue fire prevention notices requiring vegetation to be cleared. For more information, visit the Country Fire Authority website: www.cfa.vic.gov.au/about/who-does-what/



Resolving issues with trees

If you and your neighbours are unable to come to agreement on how to manage trees, you may be able to make a formal complaint to your local council.

If your local council considers that your neighbour is breaking local laws regarding trees overhanging a footpath, protected trees, nature-strip trees or parkland trees, they can issue a notice requiring your neighbour to comply with relevant laws.

Local councils do not handle disputes about trees that are overhanging private property. These disputes must be resolved privately by you and your neighbour. The Dispute Settlement Centre of Victoria offers free help to resolve these kinds of disputes. Visit www.disputes.vic.gov.au for more information.

Want more information?

Most local council websites contain useful information about planning schemes and local laws regarding trees.

Also see the Magistrates' Court of Victoria website: www.magistratescourt.vic.gov.au

Nuisance, including pollution

Apart from noise, there are many other kinds of pollution and nuisance that can interfere with a neighbour's health and wellbeing and the enjoyment of their property. These include:

- smoke from burning off
- bad odours from uncollected rubbish
- damaged drainage or water run-offs from a neighbour's property
- unhygienic enclosures for birds or other animals
- buildings or other structures that are in disrepair.

The type of activity and its impact will determine whether it is considered a public or private nuisance. This is important because it affects what steps you take to solve your problem. Under Victorian law, a public nuisance is a problem that endangers a person's health, is offensive or seriously disrupts a person's comfort. Public nuisances tend to relate to issues that have an impact on a larger number of people. For example, smoke from the burning of rubber products on a neighbouring property could amount to a public nuisance.

Private nuisances tend to affect an individual or a small group directly. They are substantial and persistent interferences with your property or your enjoyment of it. There will always be some level of interference wherever you live so only a limited number of situations will be considered a private nuisance. See the Fitzroy Legal Service's *The law handbook*: www.lawhandbook.org.au

Resolving problems with nuisance

If you are affected by a nuisance and you are unable to resolve it yourself, then you may be able to make a formal complaint to your local council or take action yourself in court. You need to know whether your complaint falls within public or private nuisance as this will have an impact on the next steps you take.

Public nuisance

If you are affected by what you think is a public nuisance, you can make a complaint to your local council. Local councils are required as far as reasonably possible to fix all public nuisances within their districts.

If the council does not take action within a reasonable time, you can take your own action in the Magistrates' Court of Victoria at your own cost. Before taking any legal action, always seek legal advice.

Private nuisance

If you are affected by what you consider to be a private nuisance you can take court action against your neighbour. But court action can be expensive and should be a last resort. Before taking court action you should get legal advice.

Want more information?

The Magistrates' Court of Victoria operates in several metropolitan locations as well as throughout regional Victoria. The court's website (www.magistratescourt.vic.gov.au) contains information about going to court, as well as court locations and contact details, forms and fees.



Burn-offs on rural land

For information about burn-offs on private land during Fire Season and at other times, call the Victorian Department of Environment, Land, Water and Planning on 136 186.

Land use and buildings

Disputes between neighbours sometimes arise because of what a neighbour is doing on their land or what they are building on it. For example, your neighbour might be repairing a fibreglass boat in their backyard, giving off harmful fumes, or putting up a new shed that will block out the natural light in your kitchen.

To regulate land use, local councils sometimes require planning permits for residential or business developments. Business permits to run certain businesses are also sometimes required by councils or other organisations.

If your neighbour is using their residential property for business purposes and it is causing a nuisance to you, you may want to check with your local council whether any permits apply to that activity.

Want more information?

Local council websites contain useful information on planning and business permits and about local laws regarding land use and buildings.

Victorian Building Authority: www.vba.vic.gov.au

Department of Environment, Land, Water and Planning: www.delwp.vic.gov.au



Resolving neighbourhood disputes

Talking to your neighbour can help you to resolve problems before they become too serious.

Hints on resolving neighbourhood disputes

Talking with your neighbour

When talking with your neighbour, consider your neighbour's point of view and accommodate any differences, such as your background, working hours or stage of life. Always keep your conversations informal and friendly and focus on the problem you want to resolve.

Making a formal complaint to your local council

If talking with your neighbour does not fix the problem, perhaps try mediation through the Dispute Settlement Centre of Victoria (www.disputes.vic.gov.au). If this still does not resolve your dispute, you could consider making a formal complaint to your local council. Your local council website provides useful information on how to make formal complaints about a range of neighbourhood issues and about how your council can respond to them.

Seeking legal advice and taking legal action

If talking with your neighbour, mediation and council action have not resolved your neighbourhood dispute, you could consider getting legal advice to see if you have a case that you could pursue in the courts.

But remember that taking legal action is often uncertain, costly and time consuming, and is likely to permanently damage your relationship with your neighbour. It is almost always a last resort.

The **Getting more help** (p. 26) section of this booklet contains useful information on resolving disputes, local councils and getting legal advice.



Getting more help

There are a number of organisations that can help you with neighbourhood issues and disputes.

If you need to resolve a neighbourhood dispute or want information about how to make a complaint, there are a number of bodies that can help you.

Dispute Settlement Centre of Victoria


The Dispute Settlement Centre of Victoria is a free, confidential mediation service that has offices throughout the state. Dispute assessment officers can give you ideas about how to raise issues with neighbours and settle disputes.

 1300 372 888

 www.disputes.vic.gov.au

Local Government Victoria

If you do not know which local council to speak to about a problem with a neighbour, Local Government Victoria can help you find out. Also, their website has links to Victorian local council websites.

 1300 366 356

 <https://knowyourcouncil.vic.gov.au>

Environment Protection Authority (Victoria)

The Environment Protection Authority (Victoria), more commonly known as the EPA, is an independent organisation responsible for protecting the environment in Victoria, which includes regulating pollution.

 1300 372 842

 www.epa.vic.gov.au



Legal help

Victoria Legal Aid

Victoria Legal Aid provides free legal information, education and advice for all Victorians, focusing on people with low incomes and those experiencing disadvantage. Their Legal Help phone service is a good place to start to find out how to deal with your legal problem. You can speak to someone in English or in your own language.

☎ 1300 792 387

🌐 www.legalaid.vic.gov.au

Law Institute of Victoria

Hiring a private lawyer can be the best option in some circumstances. The Law Institute of Victoria can help you find a private lawyer. Use their Find Your Lawyer Referral Service to help find a lawyer that best suits your needs. All lawyers on this service give a free, 30-minute inquiry interview.

☎ (03) 9607 9550 (referral service)

🌐 www.findyourlawyer.com.au

Translating and Interpreting Service (TIS)


☎ 131 450


🌐 <https://www.tisnational.gov.au>



Community legal centres

Community legal centres provide legal information, initial advice and, in some cases, ongoing help. The Federation of Community Legal Centres can direct you to your local community legal centre or one that specialises in your type of problem.

 (03) 9652 1500

 www.communitylaw.org.au

Resources

Everyday-Law

Everyday-Law is a free legal information website produced by Victoria Law Foundation. It has easy-to-understand resources on common legal topics and information about free or low-cost legal services. Go to Everyday-Law to get the legal information and help you need.

 www.everyday-law.org.au

Notes

Notes

Everyday- Law.org.au

Helping Victorians understand the law

Looking for legal help?

Go to **Everyday-Law** to find answers to your legal problems. Use it to find information and free or low-cost legal services.



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John Silvester

Senior writer – law and justice, *The Age*



Accurate at March 2015

© Victoria Law Foundation, 2015

ISBN 978 0 9873303 2 1

PUB14-08

First published 2000

Seventh edition 2015

Reprinted 2016, 2017, 2018

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Victoria Law Foundation helps Victorians understand the law and their legal system. We are a not-for-profit organisation funded by the Victorian Legal Services Board Public Purpose Fund.

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