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In-House Briefing Memorandum

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Self Help

Self help is a remedy whereby a person may end a nuisance or trespass by his own acts. So, where a person's land is interfered with, or likely to be interfered with, he or she may take their own steps to abate the interference. A typical example is the cutting of encroaching branches or roots. Abatement is removing the source of interference. It is not alleviation of its effects.

Great care is needed as a person may only do what is necessary to avert the harm: and no more. The method of abatement must be reasonable, given the circumstances. Thus, the possessor of land may evict a trespasser or stop a nuisance if the force used is reasonably necessary to achieve that purpose and similar rules apply to actions for protection of goods. Proof of possession, reasonableness of force and the elements of nuisance and trespass are required.

Self help can also permit entry onto the land of the party creating a nuisance, but only where there are strong reasons or imminent danger to life or health. Usually prior notice is required. Where alternative remedies of injunction or damages are available, the law will not allow self-redress with force however well founded the right (*R v Macarthur* [1828]). Abatement costs are generally not recoverable from the perpetrator, unless subsequently shown to have mitigated losses that the victim might otherwise have incurred (*Young v Wheeler* [1987] Aust Torts Reports 80-126, 68,971, *Proprietors of Strata Plan No 14198 v Cowell* [1991] 24 NSWLR 478 @ 487).

The law does not favour self help, preferring legal action rather than the remedy of abatement. It frequently finds that self help is high-handed (*Lagan Navigation Co v Lambeg Bleaching, Dyeing & Finishing Co Ltd* [1927] AC 226 @ 244-245). Failure to take up the ability to abate does not affect rights to other remedies. Thus, where abatement has not occurred, damages in nuisance may include the cost of removing the nuisance, with any harm suffered before abatement probably also recoverable (*City of Richmond v Scantelbury* [1991] 2 VR 38, *Young v Wheeler* [1987] Aust Torts Reports 80-126, 68,971).

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