

**TASMANIA**

**LAW REFORM**

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**INSTITUTE**

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To whom it may concern,

**Submission to Review of the *Neighbourhood Disputes About Plants Act 2017***

Thank you for the opportunity to make a submission to the Review of the *Neighbourhood Disputes About Plants Act 2017*. This submission was prepared for the Tasmania Law Reform Institute (TLRI) by Dr Rebecca Bradfield, Principal Research Fellow.

As many of the recommendations of the TLRI published in *Problem Trees and Hedges: Access to Sunlight and Views: Final Report No 21* (2016) were adopted in the *Neighbourhood Disputes About Plants Act 2017*, this submission draws on the TLRI's prior examination of an appropriate legal framework for resolving disputes between neighbours and its recommendations.

In the TLRI's report, Recommendation 1 was that an accessible and inexpensive statutory scheme should be implemented to address trees and hedges on neighbouring land that obstruct the access to sunlight, or a view. This was also the intent to the legislation when passed. As part of this accessible low-cost dispute resolution mechanism, it was recommended that the jurisdiction to hear disputes should be vested in the Resource Management and Planning Appeals Tribunal (RMPAT) (Recommendation 4).

Anecdotally, the TLRI understands that, if informal resolution is not successful, the position is that the RMPAT (now TASCAT) process is likely to be expensive and slow, and it may be difficult to show that the threshold for intervention has been met (or in any event, that is the community's perception).

In response to the Terms of Reference for the Review, the TLRI points to aspects of its 2016 Report that formed part of its deliberations around the structure of the statutory scheme and makes the following observations:

- In proposing a low-cost dispute resolution mechanism, comment was made about the need for parties to provide expert evidence about trees, growth patterns and the like. The TLRI observed that this could result in significant expense and a contest between experts providing opposing views. The Report referred to the approach in Queensland (implemented through Practice Direction No 7 of 2013) which specifies that instead of individuals appointing their own expert, the Tribunal will appoint a single expert tree assessor (a qualified arborist) to provide expert evidence in proceedings. The role of the assessor is to inspect the tree and the properties involved and provide a report to the court outlining possible solutions. The Tribunal has the power to apportion costs as it sees fit.

In contrast, in Tasmania, the information sheet from TASCAT specified that the party lodging the application needs to provide sufficient evidence to make a prima facie case, and that this requires evidence prepared as by a suitably qualified expert if the allegation relates to risk of serious injury or damage or substantial, ongoing and unreasonable interference with the use and enjoyment of the affected land ([Information Sheet 12 Neighbourhood Disputes about Plants Act 2017 | Resource and Planning Stream \(TASCAT\)](#)).

- The TLRI also observed that the Queensland Act was supported by a range of policy documents to assist neighbours to resolve disputes amicably in the first instance. These included: Neighbourhood Mediation Kit (see [Neighbourhood mediation kit - Neighbourhood mediation kit - Publications | Queensland Government](#)) and Dispute Resolution: Tips on how to manage conflict ([How to resolve neighbourhood disputes | Your rights, crime and the law | Queensland Government \(www.qld.gov.au\)](#)). In Queensland (as with Victoria), free mediation is provided through Dispute Resolution Centres (or Dispute Settlement Centre Victoria in Victoria). Similarly in NSW, the statutory scheme is supported by government funded dispute resolution services though free mediation services provided through Community Justice Centres.

In contrast, in Tasmania, there are currently no free stand-alone government supported dispute resolution services that would be of assistance to those that have a dispute with a neighbour in relation to plants. People seeking to informally resolve the dispute through mediation would need to engage a private mediation service. An overview of the operation of the legislation is set out in a Tasmania Lega Aid factsheet but it does not provide detailed information about the process of mediation or attempting to informally resolve the dispute (see [Fact sheet – Neighbourhood trees and plants \(legaid.tas.gov.au\)](http://legaid.tas.gov.au)).

Accordingly, the TLRI suggests that these matters be given consideration in the current Review.

Kind regards

A handwritten signature in black ink that reads "J. Prichard". The signature is written in a cursive style with a checkmark-like flourish at the beginning.

Prof. Jeremy Prichard

Director