

TASMANIA
LAW REFORM
INSTITUTE

Submission Template

‘Neighbours’ Hedges as Barriers to Sunlight and a View’ Issues Paper No 19

This form provides a template for your response to the Issues Paper:

- The form is designed to be completed electronically by checking boxes or entering responses where applicable. The space provided for your answers will expand (if necessary) as you type. You are invited to include as much or as little information as you choose.
- Alternatively, you may print the form out and either fill it in manually or use a separate answer sheet (if you use a separate answer sheet, please ensure that you clearly number your answers to correspond with the questions in this form). Again, you are invited to include as much or as little information as you choose.

After you have completed your submission please either *email* or *post* the document to the Institute:

Email: law.reform@utas.edu.au

Post: Tasmania Law Reform Institute
Private Bag 89
Hobart TAS 7001

PERSONAL INFORMATION

Name:

Organisation (if any):

Address:

Email:

Phone Number:

PUBLICATION OF SUBMISSIONS

Please tick the applicable box:

- ☐ I agree to the publication and use of my submission
- ☐ I agree to the anonymous publication and use of my submission
- ☐ I do not agree to the publication or use of my submission

OPTIONS FOR REFORM

Question 1

Which model of reform do you prefer?

- ☐ Make no change and rely on the existing law
- ☐ Adopt the Victorian model of dispute resolution
- ☐ Develop a statutory scheme
- ☐ Extend the abatement notice provisions under the *Local Government Act 1993*
- ☐ Other (please specify):

If you have chosen ‘other’ please provide further detail:

QUESTIONS ABOUT YOUR PREFERRED OPTION

Please feel free to also answer questions that are not related to your preferred option

The Victorian Model of Dispute Resolution

Question 2

What types of matters might appropriately be dealt with under a dispute resolution model?

What key features should such a model possess? (You might consider questions relating to cost, accessibility, the administering body).

Please provide your reasons for selecting this option:

A Statutory Scheme

Question 3

If a statutory remedy is provided which model should be adopted?

- ☐ A model with a local council as the initial decision making authority and with appeal rights to the Resource Management and Planning Appeal Tribunal
- ☐ A model with a local council as the initial decision making authority with appeal rights to the Administrative Appeals Division of the Magistrates Court of Tasmania
- ☐ A model where applications are made directly to the Court
- ☐ A hybrid model

Please provide details of any hybrid model suggested:

Please provide your reasons for selecting the model you have chosen:

Question 4

Should the proposed legislation include a requirement that an applicant makes all reasonable attempts to resolve the issue before recourse to the formal statutory process?

- ☐ Yes
- ☐ No

Question 5

Should the obstruction of sunlight only relate to the dwelling or extend to the land as well?

- ☐ Only to the dwelling
- ☐ To the dwelling and the land

Question 6

How should the degree of obstruction be defined?

- ☐ By reference to its severity
- ☐ By reference to the owners' use and enjoyment of the land
- ☐ By reference to the 'reasonable' use and enjoyment of the land
- ☐ Other (please provide further detail)

Enter answer:

Question 7

If legislation is enacted to respond to the issue of high hedges blocking sunlight or a view, should that legislation incorporate a requirement that:

- ☐ There must be malicious intent in the planting of a hedge, or in not maintaining it, before a remedy is provided
- ☐ There must be malicious intent in planting, or not maintaining a hedge, and the rights of both property owners to legally plant or do anything on their land must be considered
- ☐ Malicious intent is not a statutory consideration but the rights of property owners must be balanced

Question 8

What type of blockage should a statutory scheme cover?

- ☐ Obstruction to sunlight
- ☐ Obstruction to a view
- ☐ Obstruction to both sunlight and a view

Question 9

Should a minimum height limit be stipulated before an application can be made under the proposed legislation?

☐ Yes

☐ No

Question 10

If you are in favour of stipulating a minimum height, why do you think this is desirable?

Question 11

Should the proposed legislation apply only to vegetation that is planted so as to form a hedge-like structure or to should it apply equally to individual trees?

☐ Only to vegetation planted to form a hedge-like structure

☐ Only to individual trees

☐ To both hedge-like structures and individual trees

Please provide your reasons:

Question 12

Should there be any restrictions regarding the zoning of property to which the proposed legislation applies?

☐ Yes

☐ No

If so to what zones should the legislation apply?

Question 13

Should there be a requirement limiting applications to the owners of adjoining properties?

☐ Yes

☐ No

Please provide reasons:

Question 14

Should the proposed legislation incorporate a requirement to consider whether the hedge existed prior to the applicant's possession of the property?

☐ Yes

☐ No

Please provide reasons:

Question 15

Should orders requiring action by an existing property owner in relation to a hedge/tree bind successors to title?

☐ Yes

☐ No

How far should this extend?

Please provide reasons:

Question 16

How should the costs of an application under the proposed legislation be apportioned?

Please provide reasons:

Question 17

How should the proposed legislation deal with the interaction between orders relating to barriers to sunlight/a view and other laws which may also regulate the growth of trees and hedges (eg, heritage legislation, significant tree register)?

Extension of Abatement Notice Provisions under the *Local Government Act 1993*

Question 18

If a local government model is adopted should separate legislation be enacted or should the abatement notice provisions of the *Local Government Act 1993* be extended to also cover problem hedges?

- ☐ Separate legislation
- ☐ Extension of abatement notice provisions

Please provide reasons:

A Hybrid Option

Question 19

If you consider that a hybrid option should be adopted, please provide details:

You are invited to add any other comments or suggestions:

Please email this document to law.reform@utas.edu.au or print it and post to:

Tasmania Law Reform Institute
Private Bag 89
Hobart TAS 7001

Thank you for taking time to respond. The Institutes appreciates your contribution to this project.