

A charter of human rights & responsibilities for Tasmania



**Tasmanian Community Consultation
October and November 2010
A Guide to the Directions Paper**



This Guide will help you understand what a charter of human rights and responsibilities is. We don't have a charter in Tasmania, but we are keen to know what you think about us having one and what should be in it. We have used examples from everyday life – from your work or school, from around your home, day services or when you are out and about.

You can also find out more by talking to the people who are working on this – there contact details are at the end of this guide.

Words we are using

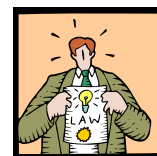
Rights

A right is something you are allowed to do. The Government and all your public services must respect your rights.

Some rights, like the right to life, can never be taken away. Other rights, like free speech, might have to be balanced so that others are not hurt or upset by what is said.

Responsibilities

We all have rights and sometimes our rights and the rights of someone else can be out of balance. When this happens we have to work together to find the balance so no-one is hurt - That is what we mean by a responsibility.



Charter

A charter is an Act of Parliament (a law) that brings all our rights into one spot so that we can easily know what they are.

Parliament

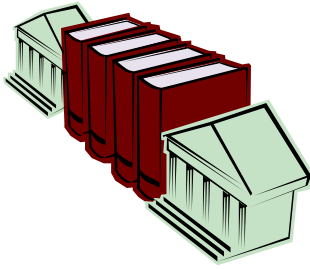
Parliament is the group of people who make the laws (the rules) and make some of the important decisions about how our community works together. They make sure government are doing what they should do.

Government

A government is the group of people who make laws work and decide on how Tasmania spends its money on services such as hospitals, roads and schools. They also have the power to make decisions that affect each one of us.



How would a Charter work to help me?



A Charter is about better government for all of us.

1. A charter would allow Parliament to look at your rights when they are making new laws and to make sure that they only make laws that balance your human rights and responsibilities.



2. If a law ignores your rights a charter could let you complain or to go to a Court to ask a Judge to tell the Parliament that the law they made ignores your rights.

3. A charter would say that it is against the law for a public organisation (like a hospital, a council, a residential support service or the police) or the people who work for it to ignore your rights. Sometimes there may be a law which makes a public organisation or its workers do things in a certain way, they have to obey that law until it is fixed so it respects your rights.



4. If a public organisation or the people who work for it ignore your rights a charter could allow you to complain about that and ask that they change the way they work so that they respect your rights.

5. A charter also helps all of us to know more about our rights and our responsibilities and when we understand then we are more likely to give everyone a 'fair go' or a better chance to be part of our community.



If this is what a charter does, do we need one? Is there anything else you would like to see the charter help you in doing? Could a charter work to do other things?



Can any of my rights be interfered with?

YES. Most rights will have limits. This is to balance them and to stop them unfairly harming other people.

Everyone has rights. Your rights are important, but so are everyone else's. We have to accept limits on our rights to make sure everyone is treated fairly.



Your right to leave Tasmania would be limited if you are in prison for stealing.

Your right to freedom of expression does not mean that it is okay to shout 'FIRE' in a crowded hall, when there isn't one.

What rights would the Charter protect?

In the Directions Paper we have said that we think the rights listed below need to be protected –

- Do you agree with us? Should some of these be left out?
- Can you think of others rights that should be protected?

Recognition and Equality before the Law And Freedom from Discrimination

Everyone has equal rights in the community, including when you are having contact with courts and tribunals or other parts of the law. You should not be treated differently because of your age, your race, your religion, your politics, because you are gay or lesbian, because you are pregnant or have a family or because you are living with a disability.

Nobody should treat you badly because of being a women or man, black or white, young or old, Muslim or Christian, live with or without a disability or because your family is different to someone else's family.

You have the right to be treated fairly – like everyone else.

Protection when detained

You have the right to freedom.



You should not be arrested or locked up without good reason, for example, if the police have reason to think you have done something criminal they may be allowed to arrest you. If you are arrested, the police must follow the law and, for example, must let you tell others you have been arrested and where you are.

Nobody should lock you in or stop you going out except when the law says they can.

It is not fair or okay for carers to lock you in your room, even if they're angry with how you have behaved.

Fair hearing

When your private affairs are involved (like when someone says you owe them money), you have a right to have your side of the story heard.

The hearing or trial must be independent and fair.

All this is true if you are involved in a crime as well.

You are innocent until you're proved guilty. This means you can't be treated as if you have done something wrong until a fair process has found that you have.

You have the right to tell your side of the story and have other people tell what they saw or heard. You have the right to get legal help and to be told clearly about what you are said to have done that is wrong, and what proof there is that you did it.

Nobody can say you are guilty of a crime and punish you unless you have had a



chance to have your say in Court.

Life

You have the right to have your life protected by the law.

You should not worry that public organisations can take your life away.

The Government must make laws or do things that protect you so you don't have to worry.

If you are in Prison, special "visitors" come and see you to make sure you are okay.



Families and Children

Families are important and you have a right to a family life.

Children have a right to be protected so they are not hurt by others whilst they are growing up.

Children must not be made to go to work or stay at home and help their families when they should be at school learning.

Children should be protected if they have to go to court, as they might not understand what is happening.



General Political and Civil

Being part of our community:

- Freedom of expression - you can say and read what you want

You can say what you like.

You can read any book that you like.

BUT you have to make sure you are not hurting others.

- Right to Privacy – you can keep some things to yourself

You should be safe at home and have time to yourself.

If you share a house, others (including support staff) shouldn't read your letters or listen to your phone calls unless the law allows for it. For example, the police may need to listen in on phone calls to help prove that someone is using the phone to do something wrong. They have to get special permission from a court to listen.

- Freedom of movement – you can move around

If you want to move home you are allowed to.

If you want to go to the shopping centre you are allowed to.

Some laws may limit your movement, for example, if it is necessary for safety. An example of this is that you are not allowed to skateboard on a highway



- Freedom of Belief – you are free to believe what you like.

If you want to go to church or to the temple or to a mosque, nobody can stop you.

If you don't want to go, that's okay too.

- Right to participate – you can be part of our democracy

You can vote for members of parliament.

You can run for government office, for example, to be a local councillor.

You can sign a protest document or petition, for example, to say "I don't like that they are turning my local park into a car park".

You should be asked what you think about things that affect you, for example, changes to the place that you live or the services that you use.

- Freedom of Association – you can get together with other people

You can join a peaceful demonstration if you disagree with a decision of government.

You can join a union.

You can join a self-advocacy group of your choice.

You can choose not to join any of these groups.



Property

You have the right to enjoy the things you own. Public organisations cannot interfere with things you own or the way you use them.

Nobody should take you money or things away from you, even if they think you've done something wrong.

Your money is yours, even if you need help to look after it.



Cultural

You have a right to find out about the things that are part of where you come from if you come from somewhere away from Tasmania. For example, you have a right to go to events with other people from where you come from. You have the right to learn to speak the same language as them, and to hear about that place.

If you are an Aborigine you have a right to be part of the Aboriginal community and to enjoy the things that are important to you, like language or community activities.

Aboriginal people have lived here for thousands of years and they are allowed to celebrate that by getting together and sharing their stories together.

Some people come to Tasmania from somewhere else in the world that is very different to Tasmania; they are allowed to bring their way of life with them, to speak their language and share their stories.

Wrongful treatment

You have a right not to be hurt in cruel ways.

You have a right not to be treated as a slave.

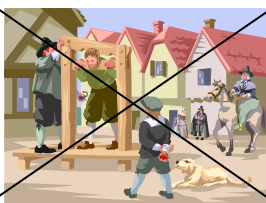
You have a right to know what doctors are doing to you and to make a decision about that treatment.

You must not be tortured or killed for being part of a group.

Nobody should hit or hurt you, even if they say you have behaved badly.

People cannot make you work for free, you should get paid for the work you do.

You must be helped to understand what a doctor is asking to do to you or what medicine the doctor thinks you should take.



Other rights?

In the list above we haven't included everything, there may be other rights. Some of the extra ones are below –

We would like you to tell us if you think these extra things are important to you.

An adequate standard of living



You are free to look for a job and if you find one, you must be paid correctly and treated fairly.



You have a right to get help from public organisations to find a home and to get food or clothing if you need that help.



You have a right to see a doctor if you have something wrong with you or are worried about your health. You have a right to go to hospital to get medical treatment.



You have a right to go to school and college, and to get training to do things you want to be able to do.

Environmental Sustainability



You have a right to expect that our environment, our forests, our national parks, our rivers will be looked after to last for the future and to be part of looking after them if you want to be.

Living with disability



If you have a disability you have the right to live independently in the community if you are able to.

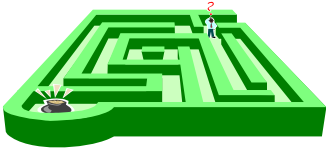




If you have a disability you have the right to be make decisions for yourself, even if you need help doing that.

If you need help, you have the right to have that help checked to make sure that it is doing what is best for you, and taking your views of what you want and don't want into account.

Will a Charter change my rights?



NO, but it makes standing up for your rights easier.

You will be able to tell public organisations when you think they are ignoring your rights. If they don't listen to you will be able to complain to a Human Rights Commission.

If you think a law is wrong because it does not respect your human rights you may be able to get a court to tell the Government and Parliament that the law is wrong.

If someone has taken you to court, you can ask the court to take your rights into account.

Will a Charter change the way public organisations behave?

YES. A charter will make sure that all public organisations must respect your rights when they do things that affect you.



A public organisation would include:

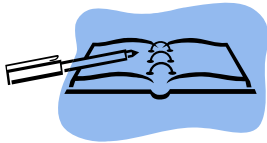
- A government organisation (e.g. Service Tasmania or National Parks)
- A council
- A public hospital
- The police
- Organisations that deliver services for government, for example, health services and disability support services
- State Schools



If we have a charter like the one proposed in the directions paper –

- Those given power over you will need to check that they are respecting your rights. They will have to think hard to make sure that they do not go further than they need to.
- Every time Government wants to bring in a new law in Parliament it must say how the new law fits with your rights.

If we have a charter can I use it against someone else?



It is easier to insist on your rights if they are written down. You can point them out to if a person is ignoring them.

If the ‘someone else’ is a public organisation, for example, the Housing Department, then you can take action to make them respect your rights.

What you do will be different in each situation, but you may be able to go to court or have a court deal with it in another case or complain to the Human Rights Commission.

BUT you will not be able take another person, who is not a public organisation, to court for breaking a charter right.

In the proposed charter all laws will have to be given a meaning that is as close as possible to the rights in the charter. A court will have rights in mind, whoever the case is between.

You will not be able to use a charter to stop friends, family and individuals doing things – only public organisations and the people who work for them.

Will a charter really change anything?



We think it will. A charter will be a law that affects all other laws. Proper respect for the charter rights should help change the way people think and what they do.



Will the charter please everyone??



Not all the time. A charter affects lots of decisions in lots of different areas. People will argue over some decisions. Sometimes there will be clashes between rights.

Some people may feel that the wrong answer is reached. But a charter will help make sure that rights are talked about when making a decision and that rights are respected.

For example, a right to privacy does not mean that Police cannot search your home if they believe strongly that you are using your home to make illegal drugs. But the Police must make sure that you understand why they are searching your home, that they have a good reason to do this and that they don't damage any of the things you own or treat you badly.

What would a charter mean for our Courts?



The charter we are proposing would help the courts protect people's basic rights.

The Courts would be able to check that rights of the whole community are properly balanced.

If you want to have a protest march around town (freedom of assembly, freedom of expression) you may need to get a permit from the Police.

The Police will make sure that the time suits others and that your protest won't put others at risk or stop other people from doing things. If Police say 'no' to your march they must have good reasons.

The court may be asked to review the Police decision. The court will look at those reasons, balance your charter rights and those of others and also think about the law when it does the review.



If we have a charter, can the Courts change the Parliament's decision?



NO. In the proposed charter, judges cannot tell Parliament what to do. But judges would be able to tell Parliament that the law does not work in a way which respects the rights in the charter so that Parliament can decide about changing the law.

What is a Human Rights Commission?

We are proposing that we have a new body in Tasmania that will help make sure our rights are respected – we are calling this a Human Rights Commission.

A Human Rights Commission will help:

- Promote our rights
- Educate the community
- Advise Government about the charter
- Advise you about your rights and deal with complaints in some situations.

The proposal in the directions paper is that the Government set up a group of people from around Tasmania who can give the Government advice on making the charter work to help all Tasmanians.



How can I Comment?

You can come and talk to us at one of our forums.

You can call the Project Manager on 6233 6315 (you may have to leave a message).

You can write to us or write your comments below and send this page to us:

Dale Webster

or e-mail to: dale.webster@justice.tas.gov.au

Department of Justice,

GPO Box 825

Hobart TAS 7001



Comments:

Please Note:

The full Directions Paper and the dates of our community forums are on the Department of Justice website

<http://www.justice.tas.gov.au>

