

A charter of  
human rights  
& responsibilities  
for Tasmania



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- This is a consultation process to form advice for the Government to consider – they haven't made a decision yet.
- Tasmanian Law Reform Institute Report now 3 years old.
- This process takes that report and the more recent experiences in ACT and Victoria to suggest a way forward, which is still flexible depending on the feedback.



## Who else has one?

The proposed Charter is similar to those operating successfully in the UK and New Zealand; and in Australia, the Australian Capital Territory and Victoria.



## What is a human rights charter?

- A human rights charter is a piece of legislation that spells out a list of basic human rights in a single Act of Parliament. (some of these rights are elsewhere in Tas. law, others are new to Tas.)
- A charter would ensure Government would have to have regard for human rights in its day-to-day operations.
- A charter would also apply to organisations delivering programs and services that are funded and/or controlled by the Government e.g. funded residential services for people living with a disability provided by a non-government body.
- The proposed Charter and processes will:
  - protect the human rights and freedoms of Tasmanians through improving governance and
  - help to change attitudes and perceptions about those rights and freedoms.
- Integral to the concept of a charter of rights is responsibilities, including the responsibility to respect the rights of others in our community.



## How will it work?

- When new laws are introduced into Parliament they would have to be accompanied by a statement advising Parliament whether or not they meet the standard set by the proposed Charter.
- If the new laws do not meet the standard then the statement must say why the new law is necessary and how it meets a “limitation” on human rights allowed by the Charter.



## How will it work for services and programs?

- As new services or programs are developed they will also need to be assessed against charter rights and adjusted to conform.
- When Agencies are developing new services they will be required to develop a human rights impact statement.



## What about laws that are already contrary to the Charter of Rights and Responsibilities?

- The Supreme Court would be able to make a declaration that an Act of Parliament or subordinate laws (for example, a regulations or by-law) does not meet the standard set by the Charter and as a result refer those laws back to the Parliament. The Court would be required to give the Attorney-General and the Human Right Commission a chance to comment when it is considering making a declaration of this kind.
- The Supreme Court would **not able to declare a non-compliant law invalid**, because it is important that the elected Parliament has the final say in whether a human right protected by the Charter can be limited in a free and democratic society.



## Will having a charter lead to more litigation?

- The experience in the United Kingdom since the enactment of the Human Rights Act has seen very little increase in litigation in that country. In Scotland human rights arguments were raised in less than 1% of relevant cases in the three year period between 1999 and 2003. When the Human Rights Act was introduced in the ACT, the legislation was mentioned in only 14 cases out of 1,800 or so cases heard that year.
- Generally, the proposed Charter will not provide an additional right to legal action just for a breach of the Charter and there can be no damages awarded by a court just for a breach of the Charter.



# Three elements of Rights

- Rights – govern government/citizen relationship
- Responsibilities – do not do harm with rights
- Limitations – bring balance to rights



## What are the rights being proposed?

The main rights being proposed are those contained in the International Covenant on Civil and Political Rights:

**Recognition and Equality before the Law**

**Freedom from Discrimination**

**Protection when detained**

**Fair hearing**

**Life**

**Families and Children**

**General Political and Civil**

**Property**

**Cultural**

**Wrongful treatment**



## What are the additional rights being proposed?

The additional rights are

- **rights to economic social and cultural services, broadly described as ‘an adequate standard of living’;**
- **A right to environmental sustainability; and**
- **Some specific rights relating to persons living with disability.**



## What are the proposed limitations on the Charter?

The Charter would allow for reasonable restrictions or limitations to be placed on some rights, generally in order to protect other rights judged in the circumstances to be more important.

For example, while legislation prohibiting child pornography may be seen as limiting an individual's freedom of expression, the provisions of the legislation may be seen as creating a reasonable limitation because of the protection it gives to children.



## What checking mechanisms would be in place?

- The model proposes that the Office of the Anti-Discrimination Commissioner would be replaced by a Human Rights Commission. The Commission would absorb the responsibilities under the Anti Discrimination Act . The Commission would also help educate the community about the Charter and report on how the Charter is working.
- The proposed Human Rights Commission would also be able to inquire into programs and services and make recommendations for change if those programs or services are not being delivered in a way that is consistent with the Charter.
- The Human Rights Commission would also be able to receive some complaints from the community, make recommendations for change to services or programs or ask the Supreme Court to consider making a declaration that a law does not meet the standard set by the Charter.



## What will a Human Rights Charter mean for Tasmania?

- **Legal benefit** - The charter would reinforce protections in existing laws and provide clear protection of 'new' rights (such as freedom of expression, freedom from forced work, and protection against cruel, inhuman and degrading treatment).
- **Political benefit** - The charter would ensure transparency and accountability in government, sets human rights as a priority for government, and ensure government takes human rights into account when making laws and delivering services.
- **Educational benefit** - The charter will increase public awareness of human rights.
- **Symbolic benefit** - The charter would be a statement of values and principles for the Tasmanian Community.

# Where to from here

[www.justice.tas.gov.au](http://www.justice.tas.gov.au)

- Q and A
- Feedback
- Make the suggestions about what do we need to do next, if anything.
- If we go forward with a charter, then another round of consultation on the draft Bill in 2011.