

MEDIA RELEASE

NEWS FROM THE UNIVERSITY OF TASMANIA

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ATTENTION: Chiefs of Staff, News Directors



CHARTER OF RIGHTS RECOMMENDED FOR TASMANIA

Today the Tasmania Law Reform Institute released its Final Report No 10: *A Charter of Rights for Tasmania*. The key recommendation is that a Charter of Human Rights be enacted in Tasmania.

Australia is the only common law country that does not have a national Bill of Rights – unlike the US, the UK, Ireland, Canada, New Zealand or South Africa – and in Australia, only two jurisdictions, Victoria and the ACT, have enacted human rights Acts.

In Tasmania, a patchwork of sources provide protection of human rights, including the Tasmanian and Australian constitutions, international law, common law and state and federal laws. However, the protections offered by these sources are fragmented and incomplete – working out what rights are protected, when and how, is a complex task.

In 2006, the Tasmanian Government invited the Tasmanian Law Reform Institute to investigate how the fundamental rights Tasmanians hold as significant might be further enhanced and legally secured.

As part of the community consultation process, the Institute released an Issues Paper in September 2006 and members of the Human Rights Consultation Committee undertook 66 community consultation meetings, briefing sessions and presentations with a wide range of community groups.

The Institute received a **record 407 submissions** from individual citizens and organisations - the largest number of original submissions received on any project undertaken by the Institute. (Many of these submissions are available for viewing on the website listed below).

Of the submissions received, the vast majority (94.1%) supported the enactment of a Charter of Human Rights.

Following extensive community consultations and careful consideration, the Institute recommends that a Charter of Human Rights be enacted to enhance human rights protection in Tasmania.

The Institute considers that a Charter of Rights would:

- provide a single, comprehensible statement of the fundamental rights applicable in Tasmania;
- foster community awareness of human rights and;

- encourage the systematic development and observance across all arms of government of processes responsive to human rights.

However, the Institute acknowledges that a Charter of Rights would not be a solution for all human rights problems or prevent social inequality and injustice in Tasmania.

The Charter does, however, aim to develop a human rights conscious culture within the Tasmania.

Key points of proposed Charter:

Social and cultural rights as well as civil and political:

The Institute recommends the inclusion of economic, social and cultural rights in the Charter, as well as civil and political rights. This is in contrast with the dominant approach in the ACT and Victoria which focuses on civil and political rights, largely omitting economic, social and cultural rights.

Charter to bind public authorities only:

The Institute recommends that the Charter only bind 'public authorities' and not private individuals, corporations or community organisations that are not engaged in work for the government or in the performance of public functions. This would maintain a consistency of approach between Tasmania, Victoria, New Zealand and the United Kingdom.

Specific enforcement provisions:

The Institute recommends that the Charter contain an express provision that where a public authority has acted in a way, or proposes to act in a way, that is made unlawful by the Charter, a person who is or would be the victim of that unlawful act may take legal proceedings against the authority in the Supreme Court of Tasmania or may rely on the Charter rights in any legal proceedings.

The Institute also believes that the range of remedies available to the court should not be restricted. A court should be able to grant any remedy that is just and equitable in the circumstances. This would mean that the court could award damages to an individual for breach of Charter obligations.

Establish an independent office of Tasmanian Human Rights Commissioner:

The independent commissioner would monitor the operation of the Charter, educate and advise the community about the Charter and be joined as a party in any proceedings involving the interpretation of the Charter.

A non-entrenched Charter:

The Institute's view is that the most appropriate form for a Tasmanian Charter would be an ordinary piece of legislation. This is consistent with other modern models operating in comparable jurisdictions - the ACT, Victoria, the United Kingdom and New Zealand. It is in contrast with an entrenched Charter of Rights that can only be amended by special procedures, such as the model that operates in the United States, South Africa and Canada.

For further information and interviews:

Ms Terese Henning, Senior Lecturer in the Faculty of Law, and a member of the Institute's Board. (Ms Henning is the Board member in charge of the project)

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The full report can be downloaded from www.law.utas.edu.au/reform/ . Several public submissions are also available for viewing at this site.

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