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Law change needed to improve judicial review of government decisions

The Tasmania Law Reform Institute (TLRI) today recommended improvements to the way government decisions can be challenged by Tasmanian citizens and reviewed by the courts.

“Judicial review is a way of ensuring that public servants and other government officers act within the law so that public services, such as health and housing, are applied fairly and in the public interest,” report author Dylan Richards said.

“We have found that Tasmania’s system of judicial review is too complex, even for lawyers. That makes it inaccessible for everyone and costly to use.

“When it originated 20 years ago, the Judicial Review Act was intended to simplify the process, making it more accessible to the general public. Subsequent developments in the law have effectively defeated this purpose,” he said.

The Tasmanian *Judicial Review Act* was enacted by the State Parliament in 2000 to provide a clear and simple system for reviewing government actions and decisions. In doing so the Act was intended to protect the rights of individual citizens and protect democracy and the rule of law more generally.

In recent years a range of legal and community stakeholders raised concerns that changes to the law and government practice have served to undermine the aims and objectives of the Act.

These changes have included devolution of the public service to private agencies and using consultants instead of public servants to make public policy or administer public services.

Mr Richards said these ‘decision makers’ sometimes fall outside the scope of our present law, leaving affected people without a way to challenge their decisions.

In 2016 the concerns were formally referred to the TLRI by the Tenants Union, supported by Community Legal Centres Tasmania and the Law Society of Tasmania. Financial assistance for the inquiry was provided by the Law Foundation of Tasmania.

The TLRI inquiry – involving the first review of the Act and wide-ranging public and stakeholder consultation – concluded that many criticisms of the Act’s effectiveness are valid.

Key to the recommended reforms is a change to the legal definition of a ‘decision’. This would allow citizens to know when their rights and interests have been affected and provide a clearer source of legal remedy.

“Allowing a lease to lapse without justification, for instance, results in a family being homeless. Clarifying what a government decision is would allow that family to challenge the lack of renewal, protecting a fundamental right, and ensuring the public housing system is fair and just,” Mr Richards said.

“Representative and responsible government are cornerstones of our legal system and are most effective when public decisions are transparent and accountable.

“The TLRI, which is based at the University of Tasmania, is committed to improving access to justice throughout the community. This review contributes to optimising the operation of the law and facilitating access to justice for the benefit of all Tasmanians,” he said.

The report can be found at utas.edu.au/law-reform/publications/completed-law-reform-projects under the tab ‘Review of the Judicial Review Act 2000 (Tas)’.

For more information, please contact the TLRI on (03) 6226 2069 or law.reform@utas.edu.au.

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