

A Charter of Human Rights and Responsibilities for Tasmania

Directions Paper

The Tenants' Union of Tasmania Inc (TUT) welcomes the opportunity to respond to the Community consultation on a Charter of Human Rights and Responsibilities for Tasmania and congratulates the State Government on its continued interest in the area of human rights.

Outline of the Role of the Tenants' Union of Tasmania

The TUT is a body that represents residential tenants throughout Tasmania. We seek to protect the interests and rights of tenants, to improve the conditions of rental housing in Tasmania, to raise awareness within the community of tenancy issues and to promote legislative and policy changes to provide realistic alternatives to present forms of protection for tenants. Tenants are amongst the most disadvantaged groups in Tasmania often having low incomes and struggling with the imbalance in the relationship between landlord and tenant. It is clear to us, when speaking to over 3000 people each year that the current rights are not enough to protect tenants and to provide them access to adequate housing.

Please note in responding to the discussion paper the TUT will answer solely on the basis of the rights and protection of tenants. As such we have focused on those areas that create an issue relating to residential tenancy.

Human Rights Charter, Legislative Project, Directions Paper

The TUT believes that a Charter of Human Rights is fundamental in protecting individuals rights in Tasmania and also in Australia as a country. The TUT believes that the primary responsibility of any society should be the protection and enhancement of human rights. The TUT believes that the directions paper is a solid basis to begin Tasmania's steps to ensuring our human rights are protected.

Rights and Freedoms

The TUT's opinion is that the rights noted in the directions paper are appropriate to Tasmania. However whether they are sufficient is questionable. The rights recommended do not cover the human right to adequate housing or indeed a specific right to an adequate standard of living.

The TUT supports including a right to adequate housing in Table 1. Without a right to adequate housing many other basic rights will be compromised including the right to family life and privacy, the right to freedom of movement, the right to assembly and association, the right to health, the right to development and the human right to an adequate standard of living. The TUT believes a charter of human rights should promote the right of all people to live in security, peace and dignity.

The current rental market in Tasmania has dramatically changed in the past decade. It is now at a situation where there is a housing crisis with all indicators pointing to this crisis deepening. There are now less rental properties vacant, and the increasing cost of rents is making it harder for those on low incomes to rent premises that are adequate to their needs. As such low income earner's access to housing requires both the favourable interpretation of current legislation in favour of human rights and new legislation that articulates those human rights.

The right to access to adequate housing is not properly protected. With declining resource allocation for public housing and increasing demand on the private rental market in Tasmania, this has led to a predominance of family rental homes that are subject to the principals of 'freedom of contract' rather than public policy driven regulation. Housing is becoming more unaffordable, as the levels of rental stress (defined as when 30% or more of a household's income is spent on housing) are increasing. Alongside this is the issue where rental premises are not required to be at a particular standard at the beginning of a tenancy and when during that tenancy repairs and maintenance are not being undertaken to maintain the premises, there is an increasing body of substandard housing developing in Tasmania.

It is our view that a Charter of Rights, that includes the right to adequate housing, would add legitimacy to our ongoing legal representation and law reform work, aimed at increasing the security, affordability and standard of housing for Tasmanian tenants. Access to suitable housing contributes to a better quality of life and provides both personal and communal benefits. Given this, we believe that housing and access to suitable and standard housing is an issue that must be considered when discussing human rights.

Access to adequate housing is a human right that is expressed in a number of international instruments. The *Universal Declaration of Human Rights*, Article 25

- (1) Everyone has the right to a standard of living adequate for their health and well-being of himself (sic) and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Other international instruments also express the need to protect housing as a human right such as :

- The *International Covenant On Economic, Social and Cultural rights*, Article 11
- The *Convention on the Elimination of All Forms of Discrimination Against Women*, Article 14
- The *Convention on the Elimination of All Forms of Racial Discrimination*, Article 5
- The *Convention on the Rights of the Child*, Article 27
- The *Convention Relating to the Status of Refugees*, Article 21.
- The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, Article 43

The TUT believes that it is essential that the right to adequate housing be included in Table 1. Adding housing would also demonstrate the state governments commitment to providing and maintaining housing for disadvantaged Tasmanians and function as a guide to government decision-making.

As noted the TUT would like to see the right to adequate housing included in Table 1. The TUT believes that Article 25 of the Universal declaration of Human Rights provides a clear right to individuals that includes coverage for adequate housing and living and believes this should be included in some form. Housing is a well established human right that has found expression in the major instruments of international law. By including this in a charter of human rights for Tasmanians it would directly contribute to the support and protection of vulnerable and disadvantaged people as this is the purpose of protecting human rights.

Responsibilities

The TUT does not agree that there is a need to specify human responsibilities along side the human rights. Responsibilities for citizens are dictated through other legislation and the TUT considers the Charter of Human Rights should not be punitive in nature. Therefore we support the notion that responsibilities should only be noted via a preamble or overview statement.

Enforcement of Rights

The TUT believes that the proposed model is inadequate for providing protection for human rights in Tasmania, although it goes some way to providing access to the courts, it is limited and somewhat confusing in its elements of judicial and non-judicial review.

The TUT supports the position that an individual should be able to enforce their human rights directly in the courts without requiring another action to attach the human rights concern to. The TUT believes that an individual should have a right as a stand-alone cause of action within the court system.

In our experience working directly with tenants in our community, many of whom are at a distinct financial disadvantage, we have surmised that people are reluctant to enter the legal system to pursue their rights, for various reasons be it financial, educational or a simple lack of understanding of the legal system. Therefore the TUT promotes the inclusion of an alternative dispute resolution process in the human rights enforcement processes. The TUT submits that the Human Rights Commission proposed in the model in this paper would be a method to provide this to individuals. We support and encourage the need to draft a model to provide both satisfactory court access and alternative dispute resolution access to all individuals.

With regards to relief, the current model does not adequately provide relief to individuals who have had a human right violated. The TUT submits that the model for Tasmania should make available all relief to an individual including compensation where their rights have been breached. The current model expressly

states that damages will not be available and the TUT does not support this. The TUT believes that the current model will be detrimental to a person taking action to protect their rights.

Community Engagement

The TUT supports the implementation of those activities described in the discussion paper to ensure community engagement within the human rights is at its maximum. The TUT encourages the Government to ensure that Tasmania and its community maintain a position where we are progressive and socially aware and understand the role of human rights in encouraging the full participation of all Tasmanian citizens in social and economic life.

The TUT supports the implementation of community education, to ensure that the community understands the role of the Charter of Human rights and their ability to enforce such rights.

Human Rights Commission

The TUT supports the provision of a single independent commission, combining the Anti-Discrimination Commissioner and the proposed Human Rights Commission. We believe that the two powers are closely interlinked and would benefit for the expertise in both areas. We support this on the provision that such a combined commission be resourced appropriately to provide the service to the community.

Who must comply with Charter obligations

The TUT supports the position that all parts of state and local government, state and council owned companies and non-government service providers that provide services funded or controlled by the government comply fully with the Charter obligations. For such a charter to be effective and to provide the protection it deems to deliver it must be adhered to by the government and non-government sector. The TUT supports the recommendation in the submission of PIAC that the charter

should include a complete definition of 'public Authority' as provided in the *Charter of Human Rights and Responsibilities Act 2006* (VIC) s4(1) and the *Human Rights Act 2004* (ACT) s40(1). This would clearly define government compliance.

Additional Rights

The TUT not only supports the notion that the right to an adequate standard of living and environmental sustainability be included in a Tasmanian Charter but that this right should go further to specify what is required to achieve an adequate standard of living and in particular to include adequate housing as an essential human right to support a standard of living.

The TUT promotes the ideal of Tasmania being a leading participant in the protection of our citizens and their rights. Including such rights immediately would show leadership by expanding the scope of human rights protection in Australia. Other countries have already included such rights and as such Tasmania would not be the first to undertake such a progressive position. We believe that a charter of human rights for Tasmania should go as far as possible to cover all areas of protection necessary. There is no clear reason why there should be a delay in the inclusion of economic, social and cultural rights and any such delay would limit the extent of the protection to simply civil and political rights. We believe that the right to an adequate standard of living and environmental sustainability be included now and their inclusion should not depend on their inclusion in other Australian States or Territories.

The Tenants' Union of Tasmania again thanks the government for the opportunity to comment on the draft discussion for a Charter of Human Rights in Tasmania. We hope that our submission clarifies the meaning of human rights to housing. If you require any further information or have any questions relating to our submission please contact Meredith Barton, Acting Principal Solicitor on 6223 2591.