



**Submission to the  
Tasmania Law Reform Institute**

***A Charter of Rights for Tasmania?  
Issues Paper No 11***

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## ***Executive Summary***

The Australian Christian Lobby (ACL) provides this submission to express its concern regarding both the principles underpinning the concept of a Charter of Rights, and the potential proposal of the Law Reform Institute to the Tasmanian Government.

The Australian Christian Lobby is a political advocacy group unaligned with any political party. It is a moderate group with significant and growing support crossing all denominational lines and boundaries. The ACL strongly believes that every person has universal and innate rights and responsibilities by virtue of their humanity. Therefore we believe in the protection of the human rights of all citizens within Tasmania and Australia. However we do not believe that a Charter of Rights or any similar type of legislation will achieve this. In fact a Charter of Rights may serve to undermine the very purpose that it is intended to serve.

History tells us that a Charter of Rights will fail to achieve its intent. The Soviet Union under Joseph Stalin had a Charter of Rights. It proved of no value. The Soviet Union had two chapters that outlined all the rights of its citizens such as equality before the law regardless of sex, race; right to work; rest and leisure; right to health protection; housing; education; etc.

As a Constitutional Charter of Rights has been ruled out by the Tasmanian Government, according to the Issues Paper, it will not be addressed in this submission. However, for the record the ACL also does not support a Constitutional Charter of Rights.

In summary, ACL believes that:

1. The Tasmanian public is not requesting a Charter of Rights;
2. The Legislature is not the source of human rights;
3. A Charter of Rights is not needed;
4. A Charter of Rights will further engender a 'rights-based' culture;
5. A Charter of Rights is restrictive.

These points are explored in more detail below.

### ***The Tasmanian public is not requesting a Charter of Rights***

It seems that there has been little demand for a Charter of Rights by the Tasmanian public. This was evident during the public consultation process initiated by the Tasmanian Greens in relation to their proposed Bill of Rights tabled in October 2005. It is understood there was very little feedback or submissions from the public. Therefore, the question must be asked: Who is driving this? Where is the demand coming from? Generally it appears that judicial and social activists and some vocal minority groups are driving this agenda, not the majority of the voting public. Perhaps instances where some believe human rights have been infringed, for example counter-terrorism or industrial relations legislation, are part of the concern driving the research into a Charter of Rights for Tasmania?

### ***The Legislature is not the source of human rights***

Who decides what rights to include and what rights to exclude? What is the source of our human rights? Where do they come from? These questions are fundamental when considering what our inalienable human rights are. Rights are not something that a government or a political party can dictate, but rather they are universal and innate by virtue of our humanity. Christians believe that we have rights because we are made in the image of God. Accordingly, it is the responsibility of government to recognize the God-given rights of human beings, and to legislate to ensure those rights are protected.

If a government attempts to list human rights in an Act of Parliament, then it becomes the source and authority of those rights. Tasmanian citizens then have rights because the government tells them so, rather than by virtue of their humanity. As human rights are universal and innate, they are therefore unchangeable. Listing the rights of Tasmanian citizens in an Act of Parliament means they are no longer unchangeable. A future government can amend and change this legislation just like any other Act of Parliament (i.e. Tax legislation), either adding to or revoking such supposed rights.

The role of the legislature is to protect human rights, not to dictate them or decide what they should be. Governing authorities are to protect those who do what is right, and punish those

who do what is wrong. In other words, a citizen's innate rights are protected through the passing of laws intended to ensure justice and order. This is the purpose of all legislation.

### ***A Charter of Rights is not needed***

Australia enjoys a degree of freedom that is the envy of nations around the world. One of the reasons for this is the strength and stability provided by our democratic institutions. The Separation of Powers has proved fundamental to the protection of human rights and freedoms in the history of this nation. The separation of the legislature and the executive from the judiciary has played a vital role in the development and health of the communities we now enjoy. Virtually all the fundamental rights addressed by the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights are covered by existing common and statute law. While there may be instances in Tasmania of important rights being violated, in virtually all cases these are the result of failure of existing processes, which should be fixed as necessary. For example, if there are instances of police or prison officer violence against prisoners, these should be dealt with under existing legislation and regulations covering policing and prisons.

A Charter of Rights would begin to shift more and more policy and legislative decisions out of the hands of the elected representatives of our parliament, and into the hands of the unelected judiciary. All State laws would be subservient to a Charter of Rights, allowing the unelected judiciary to decide whether an Act of Parliament is in contravention with this Bill. This leaves room for activist judges to interpret the intent of a Charter of Rights according to their prejudice. This removes the necessary checks and balances that currently exist. If the Tasmanian public do not like the laws that are being passed by our Parliament, they can take action and make their voice known at the next election. That same check and balance is not available with the judiciary.

As Victorian QC Charles Francis argued during the recent debate on a Charter of Rights in Victoria<sup>1</sup>,

*'All existing state legislation and the common law will be interpreted by the courts to comply with the Charter. ... in the Consultation Committee's Report it is said*

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<sup>1</sup> Francis, Charles. (2006) Private communication. April

*“Victorian courts and tribunals would be required to interpret all legislation, so far as it is possible to do so, in a way that is consistent with the Charter. In doing so they would need to take account of why the law was passed in the first place” (Dept. of Justice 2005, p4). ... this plainly suggests that courts and tribunals will no longer necessarily construe the actual legal meaning of the existing statutes, but rather will be free to interpret the law in accordance with their own beliefs as to what the philosophy of the Charter ought to be’.*

We concur with Francis’ view that *‘this represents a very serious transfer of power from the legislature to activist judges and activist tribunals. Much of the Charter is expressed in vague terms, which will further greatly increase the opportunity for activist judges and tribunals to mould the law in accordance with their own philosophy’.*

### ***A Charter of Rights will further engender a ‘rights-based culture’***

Depending on the outcomes of all this issues raised in questions 13-21 on page 4 of the Issues Paper, under S1.4 Key Questions, a Charter of Rights may create a burdensome human rights enforcement industry, an extraordinary additional workload upon public servants as well as private organizations to ensure compliance and education as they attempt to carry out all the potential requirements in a Charter of Rights.

For human rights to be protected, individuals within a community need to understand their responsibilities towards their fellow citizens, enabling them to act responsibly thereby protecting rights. Rights talk is the order of the day.<sup>2</sup> A Charter of Rights would create a culture even more focussed on a person’s rights rather than their responsibilities, potentially leading to increased litigation and cost. While the issues paper suggests this is not a valid fear, we strongly believe that the costs associated with both administering a Charter of Rights and the implications on society of such a piece of legislation will significantly outweigh any expected benefits.

All of the issues raised in questions 13-21 have the potential to lead to very significant increase in costs. The additional public and private costs imposed by these processes appear not to have

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<sup>2</sup> Ahdar, Rex. (2001) Adrift in a sea of rights.

been costed in any publicly disclosed way. We doubt that any real attempt has indeed been made to cost them at all. They represent an enormous waste of public (and also private) funds, given very little benefit in our estimation. The opportunity cost involved here in terms of spending on real priorities such as public health and education is enormous.

### ***A Charter of Rights is restrictive***

A Charter of Rights appears likely to restrict even the *discussion* or *criticism* of activities that most Christians find undesirable for both societal and personal reasons. On the other side of the coin, it could also restrict people without any religious faith engaging in discussion or criticism of those who do have faith. For example, many people enjoy the freedom to express their views or concerns on the role of faith in politics. More generally the public discussion and comparison of different ideologies, faiths, worldviews and beliefs is a necessary component of any religion. Those who hold to a particular ideology and believe it to be true naturally claim other ideologies to be false. This is healthy and an important component of a democratic society.

Another obvious example is the likely conflict between ‘discrimination’ provisions, and the right of members of religious cultural groupings to express a strong view against a particular behaviour, for example, acceptance of homosexuality as a desirable or valid lifestyle. Contrary to the alleged intention of a Charter of Rights, we believe it will substantially erode existing freedoms of Christian and other communities.

## ***Conclusion***

In conclusion, a Charter of Rights is simply not necessary. The Tasmanian public does not appear to be demanding such a Charter, which clearly reinforces that it is the judicial and social activists and some vocal minority groups that are driving this agenda. It will not protect the rights of Tasmanians. Many rights and freedoms intended to be protected by a Charter of Rights may be undermined and restricted by it.

As the late Sir Harry Gibbs has said, *“If society is tolerant and rational, it does not need a Charter of Rights. If it is not, no Charter of Rights will preserve it.”*

## ***The Australian Christian Lobby***

The Australian Christian Lobby (ACL) is a non-party partisan, non-denominational political lobby group that represents the views of hundreds of churches and thousands of supporters Australia wide. The Christian constituency reflects a sizeable percentage of the broader community. 68% of the Australian population declared themselves Christian in the 2001 ABS Census and about 2 million Australians attend a church regularly. As such, while ACL does not claim to speak for all these people, its policy suggestions may resonate with large numbers of them.