

## **TASMANIAN BILL OF RIGHTS**

### **Terese Henning, University of Tasmania**

In some ways I suppose it is still a little premature to talk about what we are doing in Tasmania in relation to a Bill of Rights because we are not actually commencing work on this project until July. Nevertheless, today I will speak about the background to the Tasmanian project, what our plans are and what, even at this stage, we know some of the challenges will be.

In July/August last year the then Attorney General, Judy Jackson, mooted the idea with me of investigating the possibility of a Bill of Rights for Tasmania. So, the project, which is due to start in July, had its genesis in Judy's personal vision. Towards the end of last year, engaged the Law Reform Institute of Tasmania, which is attached to the Law Faculty at the University of Tasmania, to investigate suitable options for human rights protection in Tasmania. Then the Justice Department of Tasmania entered into a contract with the University of Tasmania to engage my services for the reference. The Justice Department has provided \$50,000 for the project.

The process foreshadowed for the project will involve stimulating public debate about human rights in Tasmania; engaging in consultation with key stakeholders and conducting community consultation.

**The Attorney identified community discussion and consultation as a cornerstone for developing workable human rights protection for Tasmania** – relying on the ACT and Victorian experience in this regard as demonstrating the significance of community participation in giving the community “ownership” of the process and in fostering community awareness of and commitment to people's rights and a rights based way of thinking about community/Governmental/public authority relations.

### **Terms of Reference**

1. To identify current protections of human rights in Tasmania;
2. To research different models operating in other jurisdictions;
3. In consultation with the community and key stakeholders to identify the model best suited to promoting and protecting human rights in Tasmania. Key stakeholders are identified broadly as the AG, Premier and Cabinet, the Parliament, the Judiciary and Magistracy, the Anti-

Discrimination Commissioner, the Children's Commissioner and the community.

### **Preferred Model**

The only matter identified in the reference to the LRIT indicating a preferred model is that it must preserve the sovereignty of Parliament. Impliedly this points us in the directions of the UK, New Zealand, ACT, and Victorian models as opposed to the US model.

So the terms of reference are comparatively broad:

- We are not limited to a statutory as opposed to a constitutionally entrenched model (though the supremacy of parliament requirement points to the former rather than the latter. However, in Tasmania, this issue is of less significance than in some jurisdictions because the Tasmanian Constitution is, itself, an Act of Parliament).
- Our focus is not directed to Civil and Political Rights in preference to Economic, Social and Cultural rights;
- We have not been directed to exclude the possibility of individual causes of action based on human rights breaches.

### **Compare with Victorian and ACT reference.**

You can see that in this regard the Tasmanian reference differs from that in Victoria where the Government Statement of Intent defined the parameters of the preferred model – supremacy of Parliament, UK/NZ/ACT model vs US, Civil and Political rights vs ES&C rights, no new causes of action, an Act rather than entrenched.

ACT – So it probably resembles more closely the terms of reference given to the ACT Bill of Rights Consultative Committee, though the Tasmanian reference is less detailed in the questions it seeks to have answered. Nevertheless I think that many of those questions are implicit in the Tasmanian reference.

## **Who will be engaged on this project? Timeframe and Outputs**

### **Who?**

Basically I am it, though I will of course have the support of the LRIT director, Professor Kate Warner and some advisory assistance from the LRIT Board. The \$50,000 provided by the Government is only really enough to buy me out of my second semester teaching commitments, to fund limited research assistance and to provide some funds to support community consultation including publications.

### **Timeframe and Outputs**

Accordingly, my first task in July, (which I have already put out a number of feelers on), will be to form an Advisory Committee to assist in the process of devising community consultation and also in devolving the process of community consultation. Unfortunately, the Advisory Committee will have to provide their services on a volunteer basis.

The Advisory Committee will also provide advice on publicity and publications like the Discussion Paper and the Final Report.

Even though, strictly speaking work on the project will commence in July, I have already started to lay the groundwork for building community and other links, gathering background information on other models etc., educating myself and beginning to formulate questions on which to seek submissions in the community consultation process.

The second task for the project will be the writing of a Discussion Paper to be completed by the end of August. This will form the basis of the consultation process.

We anticipate that community consultation will conclude by the end of November – giving three months for the consultation, which seems short but we hope that it will have the advantage of being concentrated.

The Final Report is required to be written by February/March 2007, but I am hoping to have it completed earlier than that. The amount of time for the

writing of the report includes time for its consideration by the Board of the Law Reform Institute and certain key stakeholders.

### **Challenges**

The major challenges we face are those related to community consultation – achieving widespread engagement with the process and support for the project. Partly this problem arises because of the limited resources for the project – personnel and financial; it also arises because we are starting from a low level of current community awareness of human rights matters and, it is my view, because the current political climate, at least that generated at a Federal level, is antithetical to human rights projects of this kind and has created a community climate that to some extent accepts that attitude.

However, Prof Warner, (Director of the Law Reform Institute of Tasmania), did recently comment to me that a Human Rights Act or Charter would have been very useful to her in her review of Sentencing Laws in Tasmania. Further, we have had indications from some members of the Judiciary in Tasmania that they believe a human rights Act to be both necessary and inevitable to the future protection of human rights and the development of a rights based/aware jurisprudence.

We will be relying on a voluntary assistance to devolve community engagement and consultation.

Achieving the level of desired consultation in the time frame allocated to it will also be a challenge but I am hoping that we can turn this into a plus by engaging in a really concentrated and concerted effort in this regard.

Another challenge is that we now have a new Tas AG and we are aware that his priorities may well not be the same as Judy Jackson's. She was very committed to law reform and human rights. We are yet to meet the new AG.

Thankyou. Any questions.