

TASMANIA

TASMANIAN BILL OF RIGHTS BILL 2005

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SCHEDULE 1 – ICCPR SOURCE OF HUMAN RIGHTS

TASMANIAN BILL OF RIGHTS BILL 2005

(Brought in by Margaret Ann Putt MHA)

A BILL FOR

An Act to respect, protect and promote human rights.

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Tasmanian Bill of Rights Act 2005*.

Commencement

2. The provisions of this Act commence on a day to be proclaimed.

Preamble

3. The following principles established as the Tasmanian Bill of Rights Preamble apply for the purposes of the application, operation and interpretation of this Act

- (a) Human rights are necessary for individuals to live lives of dignity and value.

- (b) Respecting, protecting and promoting the rights of individuals improves the welfare of the whole community.
- (c) Human rights are set out in this Act so that individuals know what their rights are.
- (d) Setting out these human rights also makes it easier for them to be taken into consideration in the development and interpretation of legislation.
- (e) This Act encourages individuals to see themselves, and each other, as the holders of rights, and as responsible for upholding the human rights of others.
- (f) Few rights are absolute. Human rights may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. One individual's rights may also need to be weighed against another individual's rights.
- (g) Although human rights belong to all individuals, they have special significance for Indigenous people—the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.

Act to bind the Crown

4. This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

Interpretation

5. In this Act, unless the contrary intention appears—

court includes the following:

- (a) the administrative appeals tribunal;
- (b) the discrimination tribunal;
- (c) the guardianship tribunal;
- (d) the mental health tribunal;
- (e) an entity prescribed under the regulations.

conduct includes omission.

declaration of incompatibility—see section 32.

engage in conduct means—

- (a) do an act; or
- (b) omit to do an act.

human rights—see section 5.

human rights commissioner—see section 40 (1).

ICCPR means the International Covenant on Civil and Political Rights.

international law includes—

- (a) the International Covenant on Civil and Political Rights and other human rights treaties to which Australia is a party; and
- (b) general comments and views of the United Nations human rights treaty monitoring bodies; and

- (c) declarations and standards adopted by the United Nations General Assembly that are relevant to human rights.

State law means an Act or statutory instrument.

PART 2 – HUMAN RIGHTS

What are *human rights*?

6. In this Act:

human rights means the civil and political rights in part 3.

Who has human rights?

7. Only individuals have human rights.

Rights apart from Act

8. This Act is not exhaustive of the rights an individual may have under domestic or international law.

PART 3 – CIVIL AND POLITICAL RIGHTS

Recognition and equality before the law

9. (1) Everyone has the right to recognition as a person before the law.

(2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.

(3) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

Right to life

10. (1) Everyone has the right to life. In particular, no-one may be arbitrarily deprived of life.

(2) This section applies to a person from the time of birth.

Protection from torture and cruel, inhuman or degrading treatment etc

11. (1) No-one may be—

(a) tortured; or

(b) treated or punished in a cruel, inhuman or degrading way.

(2) No-one may be subjected to medical or scientific experimentation or treatment without his or her free consent.

Protection of the family and children

12. (1) The family is the natural and basic group unit of society and is entitled to be protected by society.

(2) Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

Privacy and reputation

13. Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

Freedom of movement

14. Everyone has the right to move freely within the State of Tasmania and to enter and leave it, and the freedom to choose his or her residence in the State of Tasmania.

Freedom of thought, conscience, religion and belief

15. (1) Everyone has the right to freedom of thought, conscience and religion. This right includes—

- (a) the freedom to have or to adopt a religion or belief of his or her choice; and
- (b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and

teaching, either individually or as part of a community and whether in public or private.

(2) No-one may be coerced in a way that would limit his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Peaceful assembly and freedom of association

16. (1) Everyone has the right of peaceful assembly.

(2) Everyone has the right to freedom of association.

Freedom of expression

17. (1) Everyone has the right to hold opinions without interference.

(2) Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.

Taking part in public life

18. Every citizen has the right, and is to have the opportunity, to—

(a) take part in the conduct of public affairs, directly or through freely chosen representatives; and

(b) vote and be elected at periodic elections, that guarantee the free expression of the will of the electors; and

- (c) have access, on general terms of equality, for appointment to the public service and public office.

Right to liberty and security of person

19. (1) Everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained.

(2) No-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.

(3) Anyone who is arrested must be told, at the time of arrest, of the reasons for the arrest and must be promptly told about any charges against him or her.

(4) Anyone who is arrested or detained on a criminal charge—

- (a) must be promptly brought before a judge or magistrate; and
- (b) has the right to be tried within a reasonable time or released.

(5) Anyone who is awaiting trial must not be detained in custody as a general rule, but his or her release may be subject to guarantees to appear for trial, at any other stage of the judicial proceeding, and, if appropriate, for execution of judgment.

(6) Anyone who is deprived of liberty by arrest or detention is entitled to apply to a court so that the court can decide, without delay, the lawfulness of the detention and order the person's release if the detention is not lawful.

(7) Anyone who has been unlawfully arrested or detained has the right to compensation for the arrest or detention.

(8) No-one may be imprisoned only because of the inability to carry out a contractual obligation.

Humane treatment when deprived of liberty

20. (1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.

(2) An accused person must be segregated from convicted people, except in exceptional circumstances.

(3) An accused person must be treated in a way that is appropriate for a person who has not been convicted.

Children in the criminal process

21. (1) An accused child must be segregated from accused adults.

(2) An accused child must be treated in a way that is appropriate for a person of the child's age who has not been convicted.

(3) A child must be brought to trial as quickly as possible.

(4) A convicted child must be treated in a way that is appropriate for a person of the child's age who has been convicted.

Fair trial

22. (1) Everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

(2) However, the press and public may be excluded from all or part of a trial—

- (a) to protect morals, public order or national security in a democratic society; or
- (b) if the interest of the private lives of the parties require the exclusion; or
- (c) if, and to the extent that, the exclusion is strictly necessary, in special circumstances of the case, because publicity would otherwise prejudice the interests of justice.

(3) But each judgment in a criminal or civil proceeding must be made public unless the interest of a child requires that the judgment not be made public.

Rights in criminal proceedings

23. (1) Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

(2) Anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else:

- (a) to be told promptly and in detail, in a language that he or she understands, about the nature and reason for the charge;

- (b) to have adequate time and facilities to prepare his or her defence and to communicate with lawyers or advisors chosen by him or her;
- (c) to be tried without unreasonable delay;
- (d) to be tried in person, and to defend himself or herself personally, or through legal assistance chosen by him or her;
- (e) to be told, if he or she does not have legal assistance, about the right to legal assistance chosen by him or her;
- (f) to have legal assistance provided to him or her, if the interests of justice require that the assistance be provided, and to have the legal assistance provided without payment if he or she cannot afford to pay for the assistance;
- (g) to examine prosecution witnesses, or have them examined, and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as prosecution witnesses;
- (h) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court;
- (i) not to be compelled to testify against himself or herself or to confess guilt.

(3) A child who is charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.

(4) Anyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher court in accordance with law.

Compensation for wrongful conviction

24. (1) This section applies if—

- (a) anyone is convicted by a final decision of a criminal offence; and
- (b) the person suffers punishment because of the conviction; and
- (c) the conviction is reversed, or he or she is pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice.

(2) If this section applies, the person has the right to be compensated according to law.

(3) However, subsection (2) does not apply if it is proved that the nondisclosure of the unknown fact in time is completely or partly the person's own doing.

Right not to be tried or punished more than once

25. No-one may be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with law.

Retrospective criminal laws

26. (1) No-one may be held guilty of a criminal offence because of conduct that was not a criminal offence under State law when it was engaged in.

(2) A penalty may not be imposed on anyone for a criminal offence that is heavier than the penalty that applied to the offence when it was committed. If the penalty for an offence is reduced after anyone commits the offence, he or she benefits from the reduced penalty.

Freedom from forced work

27. (1) No-one may be held in slavery or servitude.

(2) No-one may be made to perform forced or compulsory labour.

(3) In subsection (2):

forced or compulsory labour does not include—

- (a) work or service normally required of an individual who is under detention because of a lawful court order, or who has been conditionally released from detention under a court order; or
- (b) work or service required because of an emergency or calamity threatening the life or wellbeing of the community; or
- (c) work or service that forms part of normal civil obligations.

Rights of minorities

28. Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.

Human rights may be limited

29. Human rights may be subject only to reasonable limits set by State laws that can be demonstrably justified in a free and democratic society.

PART 4 – APPLICATION OF HUMAN RIGHTS TO STATE LAWS

Application of Part 4

30. This part applies to all State of Tasmania laws.

Interpretation of laws and human rights

31. (1) In working out the meaning of a State law, an interpretation that is consistent with human rights is as far as possible to be preferred.

(2) In this section:

working out the meaning of a State law means—

- (a) resolving an ambiguous or obscure provision of the law; or
- (b) confirming or displacing the apparent meaning of the law; or
- (c) finding the meaning of the law when its apparent meaning leads to a result that is manifestly absurd or is unreasonable; or
- (d) finding the meaning of the law in any other case.

Interpretation of human rights

32. (1) International law, and the judgments of foreign and international courts and tribunals, relevant to a human right may be considered in interpreting the human right.

(2) In deciding whether material mentioned in subsection (1) or any other material should be considered, and the weight to be given to the material, the following matters must be taken into account:

- (a) the desirability of being able to rely on the ordinary meaning of this Act, having regard to its purpose and its provisions read in the context of the Act as a whole;
- (b) the undesirability of prolonging proceedings without compensating advantage;
- (c) the accessibility of the material to the public.

(3) For subsection (2) (c), material in the Tasmanian legislation register is taken to be accessible to the public.

Declaration of incompatibility

33. (1) This section applies if—

- (a) a proceeding is being heard by the Supreme Court; and
- (b) an issue arises in the proceeding about whether a State law is consistent with a human right.

(2) If the Supreme Court is satisfied that the State law is not consistent with the human right, the court may declare that the law is not consistent with the human right (the *declaration of incompatibility*).

(3) The declaration of incompatibility does not affect—

- (a) the validity, operation or enforcement of the law; or

- (b) the rights or obligations of anyone.

(4) The registrar of the Supreme Court must promptly give a copy of the declaration of incompatibility to the Attorney-General.

Attorney-General's action on receiving declaration of incompatibility

34. (1) This section applies if the Attorney-General receives a copy of a declaration of incompatibility.

(2) The Attorney-General must present a copy of the declaration of incompatibility to the House of Assembly within 6 sitting days after the day the Attorney-General receives the copy.

(3) The Attorney-General must prepare a written response to the declaration of incompatibility and present it to the House of Assembly not later than 6 months after the day the copy of the declaration is presented to the House of Assembly.

Notice to Attorney-General and commissioner

35. (1) This section applies if—

- (a) the Supreme Court is considering making a declaration of incompatibility in a proceeding; and
- (b) the State is not a party to the proceeding.

(2) The Supreme Court must not make the declaration unless the court is satisfied that—

- (a) notice of the issue has been given to the Attorney-General and the human rights commissioner; and

- (b) a reasonable time has passed since the giving of the notice for the Attorney-General and commissioner to decide whether to intervene in the proceeding.

(3) For subsection (2), the Supreme Court may direct a party to give notice of the issue to the Attorney-General and human rights commissioner.

Attorney-General's right to intervene on human rights

36. The Attorney-General may intervene in a proceeding before a court that involves the application of this Act.

Human rights commissioner may intervene

37. (1) The human rights commissioner may intervene in a proceeding before a court that involves the application of this Act with the leave of the court.

- (2) The court may give leave subject to conditions.

PART 5 – SCRUTINY OF PROPOSED STATE LAWS

Attorney-General's statement on government bills

38. (1) This section applies to each bill presented to the Tasmanian Parliament by a Minister.

(2) The Attorney-General must prepare a written statement (the *compatibility statement*) about the bill for presentation to the Tasmanian Parliament.

(3) The compatibility statement must state—

- (a) whether, in the Attorney-General's opinion, the bill is consistent with human rights; and
- (b) if it is not consistent, how it is not consistent with human rights.

Consideration of bills by Parliamentary standing committee

39. (1) The relevant standing committee must report to the House of Assembly about human rights issues raised by bills presented to the Parliament.

(2) In this section:

relevant standing committee means—

- (a) the standing committee of the Parliament nominated by the Speaker for this section; or
- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Parliament responsible for the consideration of legal issues.

Noncompliance with s 37 and s 38

40. A failure to comply with section 37 or section 38 in relation to a bill does not affect the validity, operation or enforcement of any State law.

PART 6 – HUMAN RIGHTS COMMISSIONER

Human rights commissioner

41. (1) There is to be a Tasmanian Human Rights Commissioner (the *human rights commissioner*).

(2) The Anti-discrimination commissioner is the human rights commissioner.

Human rights commissioner's functions

42. (1) The human rights commissioner has the following functions:

- (a) to review the effect of State laws, including the common law, on human rights, and report in writing to the Attorney-General on the results of the review;
- (b) to provide education about human rights and this Act;
- (c) to advise the Attorney-General on anything relevant to the operation of this Act.

(2) The Attorney-General must present a copy of a report mentioned in subsection (1) (a) to the House of Assembly within 6 sitting days after the day the Attorney-General receives the report.

(3) However, the Attorney-General may amend the report (including by omitting part of the report) before presenting it to the House of Assembly to prevent the report—

- (a) disclosing the identity of—

- (i) a person whose human rights have, or may have been, contravened; or
- (ii) someone who may have contravened someone else's rights; or
- (b) allowing the identity of someone mentioned in paragraph (a) to be worked out; or
- (c) disclosing information if the disclosure of the information could, in the Attorney-General's opinion, harm the public interest.

(4) If the Attorney-General amends the report, the Attorney-General must present a statement to the House of Assembly with the report that tells the Assembly that the report has been amended.

(5) The human rights commissioner has any other function given to the commissioner under any other State law.

PART 7 – MISCELLANEOUS**Regulation-making power**

43. The Executive may make regulations for this Act.

Review of Act after 1st year of operation

44. (1) The Attorney-General must review the 1st year of operation of this Act and present a report of the review to the House of Assembly not later than 1 July 2007.

(2) The review must include consideration of—

- (a) whether, taking into consideration the 1st year of operation of this Act, rights under the International Covenant on Economic, Social and Cultural Rights should be included in this Act as human rights; and
- (b) whether environment-related human rights would be better protected if there were statutory oversight of their operation by someone with expertise in environment protection.

(3) This section expires on 1 January 2008.

Review of Act

45. (1) The Attorney-General must review the operation of this Act and present a report of the review to the House of Assembly not later than 1 July 2010.

(2) This section expires on 1 January 2011.

SCHEDULE 1 – ICCPR SOURCE OF HUMAN RIGHTS

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1	8 (1)	right to recognition as person	16
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3	8 (3)	equality before law and equal protection	26
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6	11 (1)	protection of family	23 (1)
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9	13	freedom of movement	12 (1)
10	14 (1)	freedom of thought, conscience and religion	18 (1), (3)
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12	15 (1)	peaceful assembly	21
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14	16 (1)	right to hold opinions	19 (1)
15	16 (2)	freedom of expression	19 (2), (3)
16	17	taking part in public life	25
17	18 (1)- (7)	right to liberty and security of person	9
18	18 (8)	no imprisonment for contractual obligations	11
19	19	humane treatment when deprived of liberty	10 (1),(2) (a)

column 1 item	column 2 section	column 3 description	column 4 ICCPR article
20	20	children in the criminal process	10 (2) (b),(3)
21	21	fair trial	14 (1)
22	22 (1)	rights in criminal proceedings	14 (2)
23	22 (2)	minimum guarantees for those charged	14 (3)
24	22 (3)	rights of child charged	14 (4)
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27	24	right not to be tried or punished more than once	14 (7)
28	25	retrospective criminal laws	15 (1)
29	26	freedom from forced work	8 (1), (2), (3) (a), (3) (c)
30	27	rights of minorities	27