

Legislative Council

HANSARD

Tuesday 26 November 2024

[excerpt...]

MOTION

Tasmanian Law Reform Institute - A Charter of Human Rights for Tasmania Update Report - Consideration and Noting

Ms WEBB (Nelson) - Mr President, I move -

That the Legislative Council -

(1) Notes the Tasmanian Law Reform Institute (TLRI) A Charter of Human Rights for Tasmania (No 6) Update Report, which was released on 30 April 2024.

(2) Recognises the report provides an update on the TLRI's initial A Charter for Human Rights for Tasmania Final Report released in 2007.

(3) Notes the TLRI 2023 Update report's recommendation, 'that is laws in Tasmania be reformed to provide and promote, specific, better and accessible protection for human rights through the enactment of a Tasmanian Charter of Human Rights or a Human Rights Act,' which is consistent with Recommendations 1 and 2 of the 2007 Final Report:

(4) Further notes the TLRI 2024 Update Report provides a total of 21 Recommendations.

(5) That the Legislative Council calls on the Tasmanian Government to:

(a) commence drafting a Bill for the Tasmanian Human Rights Act in accordance with both the TLRI's 2007 Final Report and 2024 Update Report; and

(b) commit to the introduction of a Bill for a Tasmanian Human Rights Act during the term of this parliament.

Ms WEBB - I am very pleased to rise today to debate Motion No. 3 on the Notice Paper under my name.

Sitting suspended from 1 p.m. to 2.30 p.m.

[excerpt...]

MOTION

Tasmanian Law Reform Institute (TLRI) A Charter of Human Rights for Tasmania Update Report - Consideration and Noting

Continued from above.

[2.50 p.m.]

Mr PRESIDENT - I call on the honourable member and while she makes her way to the podium, I would like to welcome former Clarence councillor John Peers to the Chamber today. He is sitting in and observing our process and procedures.

Ms WEBB (Nelson) - Mr President, I think I can remember where I was up to, which was right at the beginning here, saying that I rise to move debate on motion No. 3 on the notice paper under my name.

The responsibility of any parliament or government is to consciously put in place rigorous protections for the human rights of its community, and it is a weighty and significant matter for debate. In fact, it is probably one of the most significant matters for a parliament to focus its collective mind upon. To place this motion within a broader human rights context is to go back to the birth of the Universal Declaration of Human Rights, (UDHR). Rebirth often follows decimation, and it was in the aftermath of World War II, on 10 December 1948, that the General Assembly of the United Nations adopted the UDHR.

As one of eight nations involved in drafting the declaration, Australia was a proud driver of the UDHR under the influential leadership of Dr Herbert Vere Evatt, the head of the of Australia's delegation to the UN. In 1948, Dr Evatt became president of the UN General Assembly. That same year he oversaw the adoption of the UDHR. Alongside the range of international treaties and the global human rights framework, the UN and human rights advocates have emphasised not only the codified human rights and policy frameworks that stem from the UDHR, but also the specific role parliaments have in designing their protections, scrutinising their implementation and protections.

The Tasmanian community is quite aware of the opportunities and responsibilities its parliament holds as the large number of predominantly supportive submissions made to the initial 2007 TLRI report shows. Paragraphs 1 and 2 of the motion before us cite both the TLRI 2007 and the TLRI 2024 update reports, investigating the need for legislative protections of Tasmanians' human rights. Time constraints mean I will not be able to discuss in detail either of those substantial and detailed reports. Instead, I hope members have informed themselves of these reports' significant findings and recommendations, including that the researched and proposed list of absolute and non-absolute human rights be recognised and protected in a Tasmanian human rights charter.

For the purposes of this debate, however, a brief summary of the key themes is relevant to the content and intent of this motion. One significant consideration is what Tasmanians think of the issue of a legislative human rights act. When releasing its initial 2007 report, the TLRI noted that the public consultation saw a record 407 submissions received from individual citizens and organisations, the largest number of original submissions received on any project undertaken by the institute. Further, the vast majority of those submissions, 94.1 per cent, to be precise, supported the enactment of a charter of human rights.

Although the 2024 review of the 2007 report did not hold a further public consultation process, which is explained in the executive summary of the 2024 update report, the review itself was instigated by individuals and representatives of Tasmanian NGOs anxious that the time delay since 2007 may mean the report had dated and slipped behind current human rights policy and framework developments.

So, what had changed between 2007 and 2024?

In 2007 the TLRI made 23 recommendations and found a legislative charter of rights would:

- provide a single comprehensible statement of the fundamental rights applicable in Tasmania;
- foster community awareness of human rights and;
- encourage the systematic development and observance across all arms of government of processes responsive to human rights.

The TLRI's 2024 update report did not consider those broad considerations to be outdated.

Instead, it reiterates their consistent and growing relevance and need. Further, the 2024 update made 21 recommendations, all of which either support or extend the original report's 23 recommendations. The update review states, and I quote:

the experience in Tasmania and other jurisdictions since 2007 points to the continued need for a comprehensive human rights framework.

Accordingly, it remains the view of the TLRI that there is a need for a human rights act for Tasmania in seeking to protect human rights, develop a human rights culture across government and to frame parliamentary debate.

A human rights enactment provides a consistent and transparent framework for discussion of human rights implications in the development of policies and legislation as well as their implementation.

It also helps frame relationships between the community, individuals, public authorities, legislators and all arms of government - Parliament, the Executive and Courts and Tribunals.

Accordingly, the TLRI maintains its view in relation to its key recommendations in the 2007 final report and makes further recommendations with a view to strengthening some recommendations.

That is from the executive summary of the Update Report 2024. In coming to that conclusion, the 2024 report examined interstate legislative developments, review of the established legislation of the ACT and Victoria, for example, and the relatively recent Queensland Human Rights Act. It sought to measure how those acts helped protect - or otherwise - the human rights of those communities against contemporary policies or events such as COVID and its associated health restrictions or juvenile incarceration rates and treatment or access to affordable and liveable housing, as examples.

In that regard, a key development reflected in the 2024 Update Report is the fact much of its research and findings are embedded in evidence-based examinations of real-life experiences and scenarios. Crucially, the specific rights identified for enshrinement in law by the 2007 TLRI report are reiterated in the 2024 Update, which, again recommends, and I quote;

The specific rights outlined in the 2007 Final Report (Recommendation 16)

should be adopted in a Tasmanian human rights enactment.

Those specific rights are detailed in Appendix A of the 2024 report, pages 90-91.

Another common theme, reiterated across both TLRI reports and their respective recommendations is the potential for legislative human rights to actively influence and improve governance decisions and the culture which both informs and reflects those decisions.

The 2024 TLRI report states:

While the absence of a single dedicated human rights enactment in Tasmania has not meant that human rights are not considered in the development of legislation and policy or the decision-making processes of public authorities, the TLRI's view is that a legislative mandate to require the evaluation of proposed statutory instruments for compliance with human rights would be a key mechanism to embed consistent approaches to human rights in Tasmania.

We are told that by finally taking action and implementing the recommended human rights act, we can turn around the current situation which is described by the TLRI:

The approach to human rights in the development and implementation of Tasmanian law and policy since the 2007 Final Report has been uneven, with variable results for the protection of human rights. Some legislation with the potential to affect human rights has been subject to detailed review, whether by parliamentary committee or independent review, while other legislation with potential human rights implications has not. This reflects an inconsistency in the evaluation of the effect of proposed legislation on human rights and a lack of transparency as to how human rights were taken into account.

There is no good reason to ignore this expert advice. There is no justifiable reason to keep turning our back on strengthening consistency and transparency in our governance, decision-making and legislation.

In this context, it is also important to note the 2024 report's emphasis on the proposed human rights unit, the parliamentary human rights scrutiny committee, and for subordinate legislation to be accompanied by statements of human rights compatibility and subject to the usual disallowance procedures where non-compliance with human rights is identified. This truly would highlight and integrate human rights consideration in decision-making processes while also providing accountability and transparency of those decision-making processes and outcomes.

I now wish to turn briefly to paragraph 5 of the motion before us. As subparagraph 5A details:

There have been 17 years between the 2007 TLRI report recommendation that Tasmania legislate a charter of human rights and the update report released in April this year. The TLRI does not make such decisive and detailed recommendations lightly or on a whim. Anyone who has taken a cursory glance through either of these TLRI reports would agree rigorous examination and analysis informs and supports both reports' respective findings and recommendations. This begs the question: does anyone think

that if the government continues to ignore these two sets of detailed recommendations calling for a legislated human rights act that the TLRI will change its mind? That future reports and reviews will suggest something different, whether in another seven years or even another 17 years? In all likelihood, the calls for action to address the identified need to promote specific, better and accessible protection for human rights would have grown all the more loud and insistent.

Another reason why it is inexcusable to wait another year - let alone another 17 - is unlike some recent examples, the drafting and introduction of a Tasmanian human rights bill will take some time and considerable community consultation and engagement. This motion states a draft bill needs to be developed in accordance with both TLRI reports' recommendations which includes recommendations No. 21 of the 2024 report and that one reads, and I quote:

That a phase-in period be created as part of the operation of the Tasmanian Human Rights enactment. The phase-in period should be over a two-year period.

For those frustrated already by the lack of action on a Tasmanian human rights act, this recommendation may at first only add to that frustration. However, development and implementation of a thorough, comprehensive and effective human rights legislative framework will not be a fast process, so we need to start sooner rather than later. Which is also why paragraph 5 sub-paragraph 5 calls for a commitment by government to introduce a bill within this term of parliament. The wording of this sub-paragraph also recognises it is beyond the control of the government to guarantee passage of a bill, but that it can undertake to appropriately develop and genuinely consult, and then introduce a bill into the parliament. It is not an unreasonable expectation.

It is also worth reminding people that this House has already voted in support of progressing a Tasmanian human rights act, specifically. The motion passed on 22 November 2022 called on the Tasmanian government to mark the 75 anniversary of the Universal Declaration of Human Rights - which occurred in 2023 - by initiating consultation on a human rights act for Tasmania.

The current motion is consistent with and builds upon the sentiment of that earlier vote, which was supported here. I mentioned the 2023 anniversary of 75 years of the Universal Declaration of Human Rights. That was the context of the previous vote by the Chamber in late 2022, recognising that actively progressing a Tasmanian human rights act during such a profound anniversary would be a meaningful manner by which to acknowledge and commemorate the groundbreaking Declaration of Human Rights in 1948. Despite the majority of this Chamber being willing to seize the historic moment two years ago and see progress made, the government unfortunately failed to act on that momentum.

I will briefly highlight the intent of the year-long commemorative project instigated by the United Nations in recognition of the declaration's milestone, the 75-anniversary project as it relates to the question currently before the Chamber. As stated by the UN Office for the High Commissioner for Human Rights, and I quote:

The 75th anniversary of the UDHR was the moment to rekindle the hope of human rights for every person - a year of commemoration of one of the world's most groundbreaking international commitments.

In 2023, we reinvigorated the Universal Declaration of Human Rights, showing the ways it meets the needs of our time, and advancing its promise of freedom, equality and justice for *all*.

The year-long focus, which included a range of international events and forums, identified critical themes spanning a range of economic, social, cultural, civil and political rights for the implementation of the declaration, as well as the rights to development and the environment. A specific call the UN made during that year was for signatory states and sub national states to look at formal parliamentary recognition and integration of human rights.

We are closing in once more on the annual anniversary of the 1948 Declaration of Human Rights with International Human Rights Day on 10 December. The 2024 theme is Our Rights, our Future, Right Now. International Human Rights Day aims to celebrate the groundbreaking global pledge, but also provides an opportunity for countries, parliaments and governments to reaffirm their commitment to these important principles, to recognise our responsibility, to promote these rights for all peoples. Our rights, Our future, Right now, Mr President.

Significantly, the power of this anniversary recognising the Human Rights Declaration is reflected by other awareness campaigns, such as the current 16 Days of Activism Against Gender-Based Violence, which is deliberately designed to overlap with Human Rights Week due to the natural synergy between the two topics.

It is worth noting here how those Australian states with legislated human rights acts will be celebrating and commemorating International Human Rights Day this year. The Australian Capital Territory Human Rights Commissioner is focusing on human rights in housing with forums and discussions focusing on what role does housing play in giving children stability, reducing family violence, allowing effective rehabilitation, preventing recidivism and promoting good health? Also, how do Australian Capital Territory laws need to change to better protect the right to housing?

The Victorian Equal Opportunity and Human Rights Commission will commence a week-long range of activities in partnership with that state's six independent commissioners to also highlight, educate and reinforce Victoria's human rights laws. Queensland is celebrating the fifth year of a jurisdiction with legislated human rights protections by reflecting on what the act has meant for Queenslanders and how that state can look to protect and strengthen it into the future to truly embed a human rights culture. We here, now, could position Tasmania and our fellow Tasmanians to be in a similar position where in two or three years we could celebrate International Human Rights Day by also celebrating our new Tasmanian Human Rights Act.

In conclusion, the 2007 Tasmanian Law Reform Institute (TLRI) report found that current protections afforded to Tasmania's human rights are fragmented, disjointed and incomplete. Even for those with legal expertise, working out what rights are protected in Tasmania, when and how, is a complex task. Further, that initial report stated, and I quote:

Neither the Australian nor the Tasmanian constitutions represent a comprehensive source of human rights protection for Tasmanians. In fact, they contain few such protections and those protections have generally been narrowly interpreted by the courts. Many basic rights such as freedom of speech, the right to a fair trial, the right to life, the right to liberty and security of the person, and the right to privacy and protection of the family find no mention in our constitutions.

These 2007 findings were then reinforced by the TLRI's 2024 update review which found a charter of human rights or a human rights act should be adopted and an independent human rights commissioner appointed to better protect Tasmanians, and that, I quote:

There is a need for a human rights act for Tasmania in seeking to protect human rights, develop a human rights culture across government and to frame parliamentary debate.

The role of parliaments and legislated human rights frameworks is a consistent theme across both the TLRI reports and other reports and assessment of such laws when it comes to fostering and entrenching human rights cultures across decision-makers, independent entities, the public and private sectors. These laws have been found to make a positive difference when it comes to respecting and protecting human rights equitably for both the powerful and the vulnerable. There is no excuse for continued legislative procrastination in this state on this matter.

The United Nations international human rights theme for 2024 is Our Rights, Our Future, Right Now. On the dawn of Human Rights Week and in the lead-up to International Human Rights Day on 10 December, now is the time to commit to both the commencement of drafting a bill for the long recommended Tasmanian Human Rights Act and to commit to introducing such a bill during this current parliament.

On that, I commend the motion to the House.

[end of excerpt]