The Charter of Human Rights and Responsibilities
> A guide for Victorian public sector workers

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Foreword

Human rights are the basic rights that belong to everyone, regardless of age, race, sex or disability, our income or education.

In Victoria, 20 key human rights are set out in the Charter of Human Rights and Responsibilities Act 2006. Importantly, this means that respecting human rights is not just about ticking a box, or something ‘nice’ to do – it is the law.

While the Charter is still relatively new, the concepts that inform human rights aren’t – they underpin our public sector values and our work. Human rights are about treating people fairly, with dignity and ensuring individual rights are respected. The Charter requires us to think about the way people’s human rights may be affected by the decisions we make as public sector employees, from policy development to day-to-day work in the community.

This guide has been developed as a general introduction for employees of Victorian local government and state government departments and agencies. It aims to help those of us who work in public authorities understand the practical impact of the Charter and our obligations to take human rights into account in the work we do.

If you need further assistance or would like to discuss how the Charter is relevant to particular aspects of the work of your organisation, please contact the Commission, we would be very happy to help. There is more detailed information on our website and we offer training on the Charter that can be tailored for your organisation.

As always, we welcome feedback on the guide and suggestions to improve it.

Kate Jenkins
Commissioner

“Where after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works … Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

Eleanor Roosevelt, Chairman of the United Nations Human Rights Commission, 1948
About the Charter

Public sector employees must understand and comply with the Charter in their work.

The Charter of Human Rights and Responsibilities (the Charter) is an ordinary Act of Parliament that sets out the rights, freedoms and responsibilities shared by everyone in Victoria and protected by law. It aims to promote a culture where everyone’s rights are protected and considered in service delivery, policy and legislation.

Victoria is the only state in Australia to have rights protected in this way – but the Charter does not stand alone. Along with other laws that protect people’s rights (such as the Information Privacy Act 2000, Equal Opportunity Act 2010 and Racial and Religious Tolerance Act 2001), the Charter is part of a broader framework of human rights protections, including Australia’s legal obligations under seven key human rights treaties. Rights are supported at a federal level by the Australian Human Rights Commission Act 1986 (Cth), which gives people the ability to make complaints to the Australian Human Rights Commission about the actions of Commonwealth Government authorities if they breach human rights (see page 26 for more detail).

The obligation to act compatibly with human rights is closely aligned with the positive duty obligation under the Equal Opportunity Act. As employers and service providers, public authorities are required by the Act to take reasonable steps to eliminate discrimination, sexual harassment and victimisation. Taking relevant Charter rights into account in the work you do will also help you to identify potential discrimination issues before they become problems.

When public authorities fail to meet their obligations under the Charter, their actions are unlawful and can be reviewed by the Ombudsman, Auditor-General and other oversight bodies (see page 22 for more information).

The Charter is part of the employment framework for Victorian Public Sector Employees.

The values in the Charter are also reflected in the Public Administration Act 2004 and the Code of Conduct for Victorian Public Sector Employees. These apply to Victorian public sector employees. Under the Act and the Code, human rights are a public sector value and an employment principle.

This means that public sector employees must respect and promote the human rights in the Charter as a condition of employment. Failing to do so can be misconduct.

Employees should demonstrate how they meet their responsibilities under the Charter through the Performance Development Review process.

A human rights-based approach helps public authorities to identify potential human rights concerns in advance, prior to the implementation of any proposed projects or policies. It requires agencies to acknowledge, respond and ensure people’s rights to access opportunities and participate in society is supported.

Department of Transport, Planning and Local Infrastructure
How does the Charter Work?

The most important way the Charter works is by obliging public authorities to act compatibly with human rights. This means there is a direct duty on public sector workers and other public authorities to properly consider relevant human rights impacts in all decisions and actions – essentially, whether undertaking front-line service delivery or developing policy and legislation, public sector workers need to be able to assess the human rights impact of what they do.

Therefore the Charter protects human rights in Victoria in three main ways:

1. public authorities must act in ways that are compatible with human rights
2. human rights must be taken into account when developing new laws
3. people must interpret and apply all laws in a way that is compatible with human rights, as far as possible.

What is a public authority under the Charter?

- a public official within the meaning of the Public Administration Act 2004, for example a public servant employed in a department or agency, or a person appointed under statute like the Chief Commissioner of Police or the Privacy Commissioner among many others
- Victoria Police
- local councils, councillors and council staff as defined by the Local Government Act 1989
- Ministers
- courts and tribunals, and parliamentary committee members, when they are acting in an administrative capacity
- a body established by a statutory provision that has functions of a public nature, for example VicHealth, VicRoads, WorkSafe and many others
- a body whose functions are or include functions of a public nature, when it is exercising those functions on behalf of the State or a public authority, for example a community organisation contracted by the state government to deliver disability services, or an organisation contracted to deliver public transport services
- any entity declared by government regulations to be a public authority.
The Charter also requires that:

- All new Bills are accompanied by a statement of compatibility, which states whether the Bill is compatible or incompatible with the rights set out in the Charter.
- Most new statutory rules and regulations must be accompanied by a human rights certificate, which identifies whether the proposed rule limits any human right set out in the Charter (see the *Subordinate Legislation Act 1984*).
- Statutory provisions must be interpreted in a way that is compatible with human rights, as far as possible.

The Supreme Court of Victoria is able to issue a declaration of 'inconsistent interpretation', flagging for Parliament that a law is not consistent with human rights. This does not change the validity of the law which will continue to apply, but it lets Parliament know about the issue and leaves it up to the legislators to decide whether the law needs to be changed or not.

The Victorian Equal Opportunity and Human Rights Commission has a range of functions under the Charter, including:

- the provision of education about human rights
- reporting annually to the Attorney-General on the operation of the Charter
- conducting human rights reviews at the request of public authorities
- intervening in court cases raising Charter issues to help the development of the law.

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**Case study – Flexible recreation services to take into account cultural and religious needs**

In *Hobsons Bay City Council & Anor (Anti-Discrimination Exemption)* [2009] VCAT 1198 (17 July 2009), the Victorian Civil and Administrative Tribunal granted a council a temporary exemption from the Equal Opportunity Act to enable it to conduct women-only swimming sessions and related programs. The Council presented evidence to show that it had extensively consulted the local community and concluded that cultural constraints cause less women and less people from culturally and linguistically diverse communities to participate in sport and recreation compared to the rest of the community.

Deputy President McKenzie found that, for cultural and religious reasons, Muslim women and women from some cultures in the community were not able to participate in mixed male/female swimming sessions. She held that the exemption was a special measure for advancing equality (section 8 of the Charter) and imposed a reasonable limitation on the right of men to non-discrimination and freedom of movement under the Charter.

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**Case study – Guidance on physical restraint: Opportunities to promote and protect human rights**

Public authorities can play a significant role in promoting the human rights of Victorians. One example of this is the work of the Senior Practitioner in issuing the *Physical Restraint Direction Paper – May 2011*.

The Senior Practitioner was established under the *Disability Act 2006* to protect the rights of people with a disability who are subject to restrictive interventions and compulsory treatment, and to ensure that appropriate standards are complied with.

To develop the Direction Paper, the Senior Practitioner undertook a comprehensive review, research and a consultation process around the use of physical force to prevent, restrict or subdue movement of a person’s body or part of their body, for the primary purpose of the behavioural control of a person with a disability.

The Direction prohibits the use of some types of restraint and sets out processes for obtaining the Senior Practitioner’s approval for using physical restraint under the Direction.

The Direction sets out detailed explanation, checklists and oversight mechanisms, and provides guidance about evidence-based positive alternatives to physical restraint.

This Direction supports a broad range of human rights, including: the right to equality (section 8) for people with disabilities; the right to life and the positive duties that apply to safeguard the life of people in the care of public authorities (section 9); the protection from cruel, inhuman or degrading treatment (section 10); freedom of movement (section 12); the right to privacy, including the right to autonomy (section 13); and the right to liberty and security of person (section 21).
The Charter sets out 20 rights adapted from the human rights in the International Covenant on Civil and Political Rights. Australia became a party to this treaty in 1980.

The rights include ‘freedoms’ that reflect the traditional approach to civil liberty; ‘substantive rights’ that reflect human autonomy and dignity; and ‘procedural rights’ that apply to judicial and legal processes.

**Freedoms:**
- Freedom from forced work
- Freedom of movement
- Freedom of thought, conscience, religion and belief
- Freedom of expression
- Freedom of association and peaceful assembly.

**Substantive rights:**
- Right to recognition and equality before the law
- Right to life
- Right to privacy and reputation
- Right to protection of families and children
- Right to take part in public life
- Cultural rights
- Property rights
- Right to protection from torture and cruel, inhuman or degrading treatment
- Right to liberty and security of person
- Right to humane treatment when deprived of liberty.

**Procedural rights:**
- Rights of children in the criminal process
- Right to a fair hearing
- Rights in criminal proceedings
- Right not to be tried or punished more than once
- Rights in relation to retrospective criminal laws.

These rights provide a framework to guide decision-making, to manage risks and ensure the business of government is carried out in a balanced, transparent and accountable way. They can also help improve services because they ask you, as an employee of a public authority, to think about the impact your decisions may have on other people.

We (Darebin City Council) have made significant progress in positioning the Charter as an important tool in ensuring that Council’s decision-making is assessed against some fundamental human rights standards – and before a final decision or conclusion is reached. This process has generated better informed debate within Council and discussion on the role and extent of human rights protections at the local level.

Darebin City Council
Summary of the Charter rights

A brief description of each of the Charter rights is set out below. You can find the full text of each right at Appendix 2 and further detail and fact sheets on the Commission's website.

Section 8 – Right to recognition and equality before the law

Everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

For example, a government agency offers culturally sensitive health services to address the needs of migrant women.

Another agency changed its policy requiring a driver’s licence as identification for use of its services because this discriminated against people with disabilities who were unable to drive. They now also accept other forms of identification.

Section 9 – Right to life

Every person has the right to life and to not have their life taken. The right to life includes a duty on government to take appropriate steps to protect the right to life.

For example, if the government takes on the care of person in prison, child protection, or in an inpatient unit, then they must take positive steps to ensure that the person is in a safe environment and has access to health services that might affect their right to life.

Section 10 – Right to protection from torture and cruel, inhuman or degrading treatment

People must not be tortured. People must also not be treated or punished in a cruel, inhuman or degrading way. This includes protection from treatment that humiliates a person. People must not be subjected to medical treatment or experiments without their full and informed consent.

For example, hospitals should have procedures to make sure that patients scheduled for treatment understand what is involved and have agreed to the treatment.

Section 11 – Right to freedom from forced work

A person must not be forced to work or be made a slave. A person is a slave when someone else has complete control over them.

For example, an agency cannot force a person to work by threatening punishment if they do not perform the work. This does not include work done in detention because of a court order, work done in the community because of a community order or a civic obligation such as jury service.

Section 12 – Right to freedom of movement

People can stay in or leave Victoria whenever they want to so long as they are here lawfully. They can move around freely within Victoria and choose where they live.

For example, a hospital cannot refuse to discharge a person if they have capacity to make their own decision to leave.
Section 13 – Right to privacy and reputation

Everyone has the right to keep their lives private. A person’s family, home or personal information cannot be interfered with, unless the law allows it.

For example, public authorities need to take steps to protect the personal information they have about people. They can only give that information to people who lawfully require it.

Section 14 – Right to freedom of thought, conscience, religion and belief

People have the freedom to think and believe what they want, for example, to follow a religion. They can do this in public or private, as part of a group or alone.

For example, a local council extended the hours when a community hall could be used for religious activities to accommodate the practices of different religious groups in their community.

Section 15 – Right to freedom of expression

People are free to say what they think and want to say. They have the right to seek, receive and share information and ideas. In general, this right can be limited to respect the rights and reputation of other people, or for the protection of public safety and public order. For example, people can generally protest about a political issue. But there can be reasonable restrictions on when and how this can happen so that other people can access public places.

Section 16 – Right to peaceful assembly and freedom of association

People have the right to join groups or unions and to meet peacefully for a purpose.

For example, people have the right to march and rally in public to promote their cause. In general, it is the responsibility of the police to respect this right and allow people to rally peacefully. Limitations or conditions can be placed on this right to ensure other people’s rights are also respected.

Section 17 – Right to protection of families and children

Families are entitled to protection. Children have the same rights as adults with added protection according to their best interests. Children have the right to have a say about matters that affect them.

For example, a government agency considers the protection of the family and the best interests of the child in deciding to provide support services to parents with disabilities to help them look after their children. They seek information from the people concerned to help guide their decision about the best interests in this situation, following the principle of things being done ‘with us and not to us’.
### Section 18 – Right to take part in public life

Every person has the right to take part in public life, such as the right to vote or run for public office. For example, people with a vision impairment have the right to vote privately in state elections. The government provides specialised computer software for people with a vision impairment to allow them to vote privately in Victorian state elections.

### Section 19 – Cultural rights

People have different family, language, religious or cultural backgrounds. They can enjoy their culture, declare and practise their religion and use their languages. Aboriginal persons hold distinct cultural rights.

For example, a government agency enters into a partnership with traditional owners to manage land jointly.

### Section 20 – Property rights

People are protected from having their property taken, unless the law says it can be taken. For example, authorities cannot confiscate or seize a person’s property unless there is a lawful basis for doing so, such as when the property is illegal (for example drugs), stolen or was purchased from the proceeds of a crime.

### Section 21 – Right to liberty and security of person

Everyone has the right to freedom and safety. The right to liberty includes the right to not be arrested or detained except in accordance with the law. The right to security means that reasonable steps must be taken to ensure the physical safety of people who are in danger of physical harm. This aspect of the right is not limited to situations where a person is detained. It can include protection from environmental threats, violence, and other harm.

For example, a person who has been detained can ask a court to consider whether they have been detained lawfully.

This right can be relevant beyond law enforcement situations. Another example is where a hospital takes steps to provide a safe and harassment-free environment for patients who are transgender. This supports their right to security of person.

### Section 22 – Right to humane treatment when deprived of liberty

People have the right to be treated with humanity if they are detained.

For example, a government agency conducts a review of a detention facility and makes recommendations to remove health-hazards identified in a number of rooms. This helps to ensure people are detained in humane conditions.
Section 23 – Rights of children in the criminal process

A child charged with committing a crime or who has been detained without charge must not be held with adults. They must also be brought to trial as quickly as possible and treated in a way that is appropriate for their age.

For example, a child is given access to a rehabilitation program in detention to help support their ongoing developmental needs. This supports their right to be treated in a way that is appropriate for their age.

Section 24 – Right to a fair hearing

A person has a right to a fair hearing. This means the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

For example, the courts have procedures to allow the question of whether a judge may have a conflict of interest in hearing a case to be considered.

Section 25 – Rights in criminal proceedings

There are a number of minimum guarantees that people have when they have been charged with a criminal offence. These include the right to be told the charges against them in a language they understand; the right to an interpreter if needed; the right to have time and the facilities (such as a computer) to prepare their own case or to talk to a lawyer; the right to have their trial heard without too much delay; and the right to be told about Legal Aid if they don't already have a lawyer. People are presumed innocent until proven guilty; they do not have to testify against themselves or confess guilt unless they choose to do so.

For example, the court provides an Auslan interpreter for a person who needs one.

Section 26 – Right not to be tried or punished more than once

A person will only go to court and be tried once for a crime. This means if the person is found guilty they will only be punished once. If they are found to be innocent they will not be punished.

For example, a person charged with stealing something can only be tried for that crime once. If they are found to be guilty, they will pay their penalty or serve their time in prison, and that is the end of the matter. The prosecutors cannot try to convict them again for the same crime.

Section 27 – Protection from retrospective criminal laws

A person has the right not to be prosecuted or punished for things that were not criminal offences at the time they were committed.

For example, the Parliament passes a new criminal law to deal with developments in cyber-security. The police only charge people with the offence when the actions took place after the laws were passed.
Section 38 of the Charter makes it ‘unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.’

Section 7(2) of the Charter sets out when a human right may be limited:

A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factor including:

(a) the nature of the right
(b) the importance of the purpose of the limitation
(c) the nature and extent of the limitation
(d) the relationship between the limitation and its purpose
(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

You need to consider human rights in your work if you:

• work directly with members of the public or people in care or closed environments such as hospitals and prisons
• deliver services
• develop policy or draft legislation
• make decisions that affect people’s lives.

You may or may not deal directly with the public as part of your role, however, working in a public authority means you are at the front end of Victoria’s human rights obligations, since you may make decisions that directly affect the everyday lives of people in Victoria.

There are a number of simple steps set out in the following pages that will help you to make sure you are considering relevant human rights in your day-to-day work.

**How can I take human rights into account?**

The way public sector employees work can have a significant impact on a person’s human rights or the way a person’s rights are protected.

By understanding and considering human rights when delivering services, designing policies, or drafting legislation, you can play an important role in protecting these rights for all Victorians.

There are a number of simple steps you can take to ensure you are considering human rights in your work. A lot of this is about common sense.

This does not mean that considering human rights can be reduced to a tick-the-box exercise – that is not proper consideration. But a common question for people in practice is how you might demonstrate that you have turned your mind to relevant human rights, whether that’s to your manager, your client, or the Ombudsman.

Think about what you might need to put in place to help you do this or where you can get information or support to help you understand the rights implications of your work.

Ask yourself:

• what are you trying to achieve and how do you plan to achieve it?
• do you have legal authority for what you propose to do and what are the areas of discretion involved?
• how will people have input into the process? Consider the ‘nothing about us, without us’ principle.
• how will people be affected by your action, decision, policy or law? Note that this may not be limited to your target group. For example you may be working with women, but the proposed action may have a particular impact on children as well.
• have you considered their individual circumstances?

• will your action, decision, policy or law limit any rights? Which rights? Is anyone adversely affected?

• if your proposed course of action will limit rights, are these limits reasonable, necessary and rationally connected to your policy objective? Will they work? What is your evidence-base? What makes you satisfied that the proposed action would help to achieve your policy goal?

• is the measure proportionate and is there another reasonable way of achieving your goal that is less restrictive of human rights?

• how will you show that you have properly considered human rights? For example, discussing it with your client, making a file note or conducting a human rights impact assessment.

Case study – considering the needs of the person at the heart of the decision-making

The Public Interest Law Clearing House (PILCH) helped a young woman with disability from a non-English speaking background to challenge her guardian’s decision to move her into a residential facility. At this facility, no workers spoke her language and food was not prepared in the way her religion required. She wanted to remain at home with her family. The family also wanted her to live with them, with two days per week of respite care. The guardianship order was revoked after the woman’s advocates argued that the guardian’s decision was unreasonable and excessive, that the Guardianship and Administration Act 1996 required the guardian to give effect to the woman’s wishes as far as possible, and that the Charter protected her rights to culture, religion and family.

Key questions to ask when considering human rights in your work

1. Gather the information you need
   - what information do you need to make a decision?
   - what are you trying to achieve?
   - what laws and policies are relevant? Are you required to act in a certain way by law or is there discretion involved?
   - who is affected and what are their individual circumstances?
   How have you taken into account the views of people you could have an impact on – the ‘nothing about us, without us’ principle?

2. Consider your impact
   Which human rights are relevant? How does your action impact on human rights? This could be a limitation on human rights that has an adverse impact on someone or a decision that supports people’s ability to realise their human rights.
   Common issues to consider:
   - will you restrict people – their movement, where they live, are they detained in some way?
   - are you responsible for someone’s care and protection?
   - will you have an impact on people’s privacy?
   - does your activity involve children?
   - will you have a particular impact on different groups in the community?
   This is not an exhaustive list. See the table in Appendix 1 for more tips on areas where different rights may be relevant.

3. Is it reasonable?
   Is any proposed limitation on human rights reasonable as can be ‘demonstrably justified in a free and democratic society based on human dignity, equality and freedom? What is your evidence for this?

4. Is it necessary?
   What makes you satisfied that the proposed action would help to achieve your policy goal?
   - is the measure that limits a human right proportionate to what you are trying to achieve?
   - is there another reasonable way of achieving your goal that is less restrictive of human rights?
   - can it be done better or differently?
Case study: Income management – Planning ahead and building in human rights from the start

When the Australian Government decided to roll out place-based income management trials across Australia, the Victorian Government agreed to participate in the Greater Shepparton local government area trial using a consent-based model for child protection referrals.

In establishing its model for participation, the Victorian Government, through the Department of Human Services (DHS) made sure that it could continue to meet its legal obligations under Victorian law, including its obligations to act consistently with the Charter and to take relevant human rights into account when making decisions.

DHS built human rights considerations into its guidance material and training for staff from the beginning. This work recognises the need to act in the best interests of the children involved, to respect the privacy of the personal information DHS is handling, to give information about the scheme to people in a way that is accessible to them, and to consider the potential impact of income management on the particular family involved.

In the training and policy advice provided to staff, they were asked to consider the individual circumstances of their clients, such as their access to educational opportunities and their access to culturally and religiously appropriate food providers (such as kosher or halal food). Staff were advised that the implementation of the income management trial in the Greater Shepparton Area may engage the following human rights:

- protection of families and children (section 17)
- cultural rights (section 19)
- recognition and equality before the law (section 8)
- freedom of movement (section 12)
- privacy and reputation (section 13)
- freedom of religion and belief (section 14).
Consider the scenario of a school’s interaction with a parent: human rights can open up options

In this scenario, Yasmine’s relationship with her child’s school has broken down. She has made a number of complaints to the school about the adjustments that her son Joshua needs to access education with his disabilities. She has been frustrated that she has not been able to get agreement from the school on what needs to happen and has sometimes lost her temper. The school is concerned about Yasmine’s behaviour and is deciding what steps to take.

One of the teachers has suggested not allowing Yasmine on school premises and also the possibility of not allowing her younger child Sarah to enrol next year because of Yasmine’s behaviour.

The principal considers the different rights and interests involved: of her own staff, and of Yasmine, Joshua and Sarah. Taking into account relevant Charter rights, the principal considers the best interests of the children involved (section 17), – for their parent to be involved in their education and for them to go to the same school close to home, and the right to equality (section 8) – for Joshua to access education on an equal basis to others and for Yasmine to be able to raise issues about Joshua’s rights.

Looking at the whole picture opens up other options that might be less restrictive of human rights. So, the principal takes steps to arrange for a mediator to help bridge the relationship with Yasmine and offers to meet with her at the mediator’s office, so there is a sense of ‘neutral’ ground. The principal also refers Yasmine’s complaints to head office so that she can demonstrate that the complaints are being heard and taken seriously.

These measures help Yasmine and the school to have more productive meetings and the steps of banning Yasmine from the school and refusing Sarah’s enrolment do not need to be taken. These measures have also helped to ensure that the school meets its Charter obligations and its obligations to prevent discrimination and victimisation under the *Equal Opportunity Act 2010*. 
Most government actions, policies and programs have the potential to affect human rights. Some protect human rights, while others place restrictions on human rights.

The rights in the Charter are not absolute – that is, they can sometimes be limited or balanced with other rights to ensure that in protecting one human right we do not impinge on others. Limitations on rights must have a clear legal basis and they must be reasonable and proportionate in the circumstances.

For example, the right to freedom of expression can be limited to ensure national security or public order, or to comply with defamation and vilification laws.

In the course of your work, you may need to make decisions that require you to limit a human right. There must be a rational and reasonable connection between the limitation and the objective of the policy, law or decision.

Under the Charter, a human right may only be subjected to a limit if:

- the limit is provided under law
- the limit is reasonable
- the imposition on the human right is demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

As part of this process, decision-makers should always consider whether there is a way to achieve their objective that has a less negative impact on people’s human rights. Limitations on rights must only go as far as necessary to achieve a legitimate aim.

Many decisions that involve limiting human rights can be reviewed by the Ombudsman and sometimes by the courts.

Consider the scenario of a public protest: what might the least rights restrictive approach look like?

In this scenario, a group of people want to hold a street march to protest against the political views of a visiting professor. The law requires the protesters to apply for a permit, which they do. When considering the application, the local council also considers concerns raised about public safety and managing traffic. One option for dealing with these concerns is for the council to ban the protest altogether. This would have a significant impact on the group’s freedom of expression (section 15) and right to peaceful assembly (section 16). Considering the Charter rights involved and the importance of the freedom of expression in a democratic society, the Council decides to allow the protest, but limits it to an agreed route and time so that they can make appropriate arrangements with the police about traffic control.
Case study – Balancing rights when making guardianship decisions

Vera lives in nursing home. She is moderately wealthy and executed a financial Enduring Power of Attorney to one of her sons, Marvin. Marvin used Vera’s money to buy himself a new car. After this, the Victorian Civil and Administrative Tribunal revoked the Enduring Power of Attorney.

Whenever Marvin visited his mother he pestered her for money. Staff at the nursing home caught him threatening Vera. The Public Advocate was appointed Vera’s guardian to make decisions about access to Vera.

Vera said that she still wanted to see Marvin despite his threats. Stopping Marvin from seeing Vera was one solution to the problem, but it was not the only option. The guardian made a decision to restrict Marvin's access to his mother so that he was only able to visit her when supervised by a third person or in a public area within the nursing home. In making her decision, the guardian had regard to Vera’s rights under the Guardianship and Administration Act, as well as the rights set out in the Charter. Vera has rights under the Charter such as the rights to privacy and autonomy, freedom of association and protection of the family (sections 13, 16 and 17). Vera also has a right under the Charter to liberty and security of the person (section 21).

The purpose of placing restrictions on Vera’s rights under the Charter to see Marvin was to protect Vera from Marvin’s threats. The guardian considered that Marvin would not threaten his mother when there was a third person supervising them or when he would be seen by others at the nursing home. The limitation did not prevent Vera from seeing Marvin, and was proportionate to the purpose of the limitation (to protect Vera). The limitation was therefore reasonable and justified.

The decision of the guardian also affected Marvin’s rights under sections 13, 16 and 17 of the Charter. The same reasoning applied to the lawfulness of the limitation applied to Vera. In restricting Marvin’s access to Vera, the guardian promoted and protected Vera’s right to security as well as her right to freedom of association, showing how the Guardianship Act and the Charter can work hand in hand.


Consider the scenario of how human rights can be relevant in prioritising resources

In this scenario, the Hindmarshes are a growing family with young children living in community housing that receives State Government funding. There are not adequate heating and ventilation systems for the number of people living the house and there is extensive condensation and dampness in the property that is causing illness in the family.

The parents decide that they need to send the children to live with other relatives to safeguard their health and hygiene. They have made a request for repairs, but the manager is concerned that the budget for repairs is overstretched.

Failure to make the repairs could impact on a number of the Hindmarshes’ rights. The right to privacy, home and family life (section 13) is a relevant consideration. This is not a right to housing, but is the right to live without unlawful or arbitrary intrusion or interference to their home and home-life. The right to security of person (section 21) is also relevant, given the ongoing health concerns caused by the living conditions. Finally, the protection of families and children (section 17) is relevant. This includes the right for family to live together and for the best interests of the child to be a primary factor when making decisions.

These rights can be limited, but only to the extent that can be demonstrably justified in a free and democratic society (subsection 7(2)). Taking into account the nature of the rights involved, the purpose of the limitation to meet the budget allocation, and the impact of the limitation, the manager is concerned that continuing to refuse to make the repairs could breach the family’s human rights. The manager uses this human rights assessment to help to put the case for a reprioritisation of budget so that the repairs can be made.

Consider the scenario of how human rights can be relevant in prioritising resources
## Child Protection example

<table>
<thead>
<tr>
<th>You could be making decisions about ...</th>
<th>These rights could be promoted or limited by what you do ...</th>
</tr>
</thead>
</table>
| Children and families                  | Section 17 – Protection of families and children and best interests of the child  
These rights may also be relevant:  
Section 8 – Equality (for example age, disability, race, sexual orientation)  
Section 14 – Freedom of thought, conscience, religion and belief  
(for example right to practise religion or be part of a community)  
Section 19 – Cultural rights (for example enjoy culture and identity, maintain kinship ties) |
| Child safety and care                  | Section 9 – Right to life  
Section 10 – Protection from torture and cruel, inhuman or degrading treatment  
Section 21 – Right to liberty and security of person |
| Where someone can live                 | Section 12 – Right to freedom of movement |
| Personal information                   | Section 13 – Right to privacy and reputation |
| Court proceedings                      | Section 24 – Right to a fair hearing |

The Charter has proved useful in focussing administrative decision makers on circumstances where rights might not be respected ... It provides a reference point for public bodies, decision makers and the recipients of government policies and services, to improve primary decision making.

**Victoria Legal Aid**

The Charter has had a positive impact on the provision of services Hanover provides. The Charter reinforced to Hanover the need for considered policies and procedures in those areas of our activity which might infringe the rights of clients.

**Hanover Welfare Services**
General principles to keep in mind:

• You must interpret human rights broadly to ensure the implications of a decision and any limits it might have on human rights are identified and considered.

• Human rights cannot be separated, which means all human rights are connected and the protection of one right helps fulfill other rights.

• Everyone is entitled to an equal enjoyment of human rights. It may sometimes be necessary to take special measures to ensure human rights are upheld. This can involve taking proactive steps to help ‘level the playing field’ for a traditionally disadvantaged group.

• People who are affected by decisions, policies and programs should have the opportunity to participate in the process. This includes both the people who will benefit from or be affected by the decision or program, as well as those responsible for delivering the program. Participation is about more than ‘ticking the consultation box’ – people should be able to meaningfully contribute to the design of the activities that most affect them. The principles of ‘nothing about us, without us’, and ‘with us, not for us’ can be a helpful guide.

• When a child is involved, you will always need to consider the best interests of the child. The child has a right to participate and inform views as to what their best interests are.

• Human rights apply to all people in Victoria and at all times. They are not limited by citizenship and they continue to apply to people in detention and custody. A deprivation of liberty or personal freedom that is allowed under the law does not mean that all of a person’s human rights are forfeited. For example, someone in prison still has a right to practice their religion. A person in an inpatient unit still has the right to privacy, and any limitations on this right must be reasonable and necessary in the circumstances.

• You can have an impact on different rights at the same time. People’s lives can be complex. For example, a decision that supports the security of the person, like restricting where someone can go, will limit a range of other rights. The Charter provides a framework for considering what is reasonable and necessary. It also asks you to consider if there is more than one option available.

• What you do can have an impact on more than one person or group and a range of human rights. You will be familiar with the ‘silos’ that can be created when responsibilities are divided across government. An example of this is that you may have responsibility for an issue to do with the ageing population, but your actions may also have a particular impact on Aboriginal people, people with disabilities, or people in Culturally and Linguistically Diverse communities.

• Human rights are dynamic, that is, they must adapt to living standards and respond to social and cultural changes.

• You need to make sure that you do not unreasonably limit people’s rights, but there are also lots of steps you can take to actively promote and protect people’s human rights in the Victorian community.

• Considering human rights does not necessarily mean extra work, but does involve thinking in a different way and you may need to make changes to the way you make and implement decisions.

Case study – helping a child get an education by managing the causes of behaviour

A 14-year-old high school student with a learning disability was in danger of being expelled from school for behavioural issues. The Youth Disability Advocacy Service (YDAS), which believed that he needed support, wrote to the school and the Department of Education and Early Childhood Development on his behalf, highlighting their duties under the Charter. This focused attention on the need to consider the student’s behaviour in connection with his disability. The student was tested for disabilities and given the supports he needed. This supported the student’s right to equality by making adjustments to help him access education. YDAS reported that the behavioural issues reduced following the intervention and that the school was happy for him to remain enrolled. The student was also happy to stay at school.

Case study – Refugee and asylum seeker health action plan: recognising the diverse needs of people in the community

Victoria is a diverse community and has a long tradition of making a home for people from many countries, including refugees and asylum seekers. Victoria has a reputation as the national leader in refugee and asylum seeker health, developing its first action plan in 2005 to address the needs of these vulnerable populations.

The health and wellbeing needs of people from refugee backgrounds and asylum seekers are complex and their experiences can have a profound impact on short and long term health outcomes. Prolonged periods in refugee camps and marginalisation in urban settings, experiences of war, effects of torture and trauma, loss of or separation from family members, dangerous journeys to Australia, deprivation and lack of access to food, safe drinking water, basic health care and shelter are highly traumatic experiences that differentiate refugees and asylum seekers from most other migrants to Australia. Such experiences can have profound impacts on their health and wellbeing.

In recognition of these needs, the Department of Health is developing a new refugee health and wellbeing action plan in partnership with the Victorian Refugee Health Network, drawing on previous consultations guided by an expert Advisory Committee. Many community members, service providers and advocacy groups provided input during the development of the action plan.

The consultations identified key components necessary for quality refugee health care:

- the appropriate use of language services at key points
- expertise in refugee and asylum seeker health
- culturally responsive service delivery that includes working with individual communities to identify the best models for engaging and retaining people in services
- health literacy and the need to support people to obtain and understand basic health information, so that people from refugee backgrounds and asylum seekers are better able to consent to and make decisions about their health
- further work around accessible and equitable service provision
- effective local, state and national service coordination and planning
- flexibility of service models, including outreach models and developing family-centred approaches
- evidence-based service planning and provision.

The action plan will examine how the health system in Victoria can better meet the needs of people from refugee backgrounds and asylum seekers. It will set priorities and present a new model of care to ensure that refugees and asylum seekers can achieve health outcomes comparable to the broader Victorian population.

This work supports the right to equality (section 8), the right to life (section 9), protection from torture and cruel, inhuman or degrading treatment (section 10), the protection of families and children (section 17), and cultural rights (section 19).

Within the Community-Managed Mental Health Sector, the Charter has significantly impacted how quality improvement is considered and translated into action.

Psychiatric Disability Services of Victoria
What happens if human rights are breached?

The aim of the Charter is to protect and promote human rights through prevention, rather than litigation. People cannot sue directly for acts or decisions that breach the Charter alone.

However, by creating a legal obligation to act compatibly with human rights, the Charter provides an avenue for people to challenge decisions made by public authorities and the way in which they deliver their services. If a decision is not made consistently with the Charter, it is unlawful.

It is the responsibility of public sector workers to consider the human rights impacts of their policies, service delivery and decisions. The Charter helps public authorities to be transparent, accountable and proactive when it comes to protecting human rights.

The Charter has led to many public authorities developing their own complaint-handling procedures to receive and respond to people who feel that a decision or service infringes on their human rights. It is generally the approach of most public authorities to try to resolve an issue directly in the first instance.

If the matter cannot be resolved directly, a complaint can in many cases be lodged with the Victorian Ombudsman (or the Independent Broad-based Anti-Corruption Commission in relation to Victoria Police). The Victorian Auditor-General’s Office can also undertake a review to explore whether the practice of a public authority complies with the Charter, in the same way that it considers compliance with any other law.

The Charter can also be raised with other complaint-handling bodies such as the Health Services Commissioner or the Public Transport Ombudsman. Complaints about discrimination, and racial and religious vilification can be made to the Victorian Equal Opportunity and Human Rights Commission.

People can also sometimes raise their Charter rights in court when the question of whether a public authority acted lawfully under the Charter is relevant or the interpretation of a law consistently with human rights is a question in the case.

For example, in Slattery v Manningham CC (Human Rights) [2013] VCAT 1860, the Victorian Civil and Administrative Tribunal (VCAT) found that the Council had discriminated against Mr Slattery on the basis of his disability when they banned him from all council premises. VCAT also found that the Council had breached Mr Slattery’s human rights under the Charter. The Tribunal considered the Charter issues because the lawfulness of the public authority’s actions was already a question before it because of the claim under the Equal Opportunity Act 2010.

Note: The Australian Human Rights Commission can handle human rights complaints about the actions of federal government departments and agencies.

People can also make complaints about breaches of international human rights treaties to United Nations treaty bodies, when they have exhausted all of their options to fix the problem in Australia. For example, the UN Human Rights Committee can consider complaints about a breach of the International Covenant on Civil and Political Rights (ICCPR). The Committee can come to a view about whether there has been a human rights violation. Many of the rights set out in the ICCPR are also reflected in the Charter. Other committees can consider complaints under other conventions.
Consider a scenario of when human rights can be relevant to the exercise of discretion

In this scenario, John parked his car facing the wrong way on the street outside a community centre. The local council’s parking inspectors gave him a fine for a breach of the law. This is a common situation and a simple application of the local traffic laws. But John parked the wrong way on the street so that he could get out on the footpath-side of the car into his wheelchair, rather than trying to get into the wheelchair in the middle of a busy road. There were no accessible parking spots near the community centre.

John challenged the parking fine. The decision-maker took his human rights into account and upheld the appeal. John’s right to equality (section 8) in parking safely and accessing community facilities without discrimination was a relevant consideration. Allowing John to park safely will also support his right to security of person (section 21) by not putting him in a dangerous position in the middle of a busy road. Accessing the council’s community centre may also support John’s right to participate in public life (section 18).

This scenario illustrates how strictly applying the same rules to everyone does not always lead to a fair outcome. That is one of the reasons why decision-makers have discretion. Human rights can help decision-makers to consider the rights and needs of the individual they are making decisions about.

After this decision, the council could address the issue more systemically and make accessible parking available near the community centre. This would help the council to meet its positive duty obligation under the *Equal Opportunity Act 2010* to take reasonable steps to eliminate discrimination.
Where can I go for help?

You may be able to seek help from people in your organisation who know about human rights: consider people such as your manager, legal or policy officers, or those responsible for governance issues.

The Charter is also protected and promoted through a number of independent bodies.

**The Victorian Equal Opportunity and Human Rights Commission**

The Victorian Equal Opportunity and Human Rights Commission is an independent statutory body that is responsible for helping Victorians understand their human rights and responsibilities. Please contact us if you have any questions about the Charter and how it applies to your work or the people affected by the work you do.

The Commission helps people resolve complaints of discrimination, sexual harassment, victimisation and racial or religious vilification through a free, fair and timely dispute resolution service with the aim of achieving a mutual agreement.

The Commission’s role is to educate people about the rights and responsibilities contained in the Charter and to report annually to the government about the operation of the Charter. The Commission also conducts research and reports on equal opportunity issues in the community.

The Commission can conduct reviews under the Charter at the request of public authorities. This can be a useful source of input when you are setting up or reviewing a scheme or procedure.

The Commission does not handle individual complaints related to the Charter. The Commission can only offer dispute resolution under the *Equal Opportunity Act 2010* and the *Racial and Religious Tolerance Act 2001*.

Services provided by the Commission include:

- **Enquiry Line – 1300 292 253**
- a free, fair and timely dispute resolution service
- information and education about equal opportunity, racial and religious vilification and the Charter
- education, training and consultancy services.

The Commission publishes a broad range of material to help educate people about human rights and equal opportunity in Victoria. Examples include:


For more information visit [humanrightscommission.vic.gov.au](http://humanrightscommission.vic.gov.au)
Ombudsman Victoria

The Ombudsman is an independent officer who investigates complaints about state government departments, most statutory authorities and local government.

The Ombudsman can initiate investigations into breaches of the Charter and can review the lawfulness of a public authority’s actions or decisions. The Ombudsman can also consider individual complaints about the administrative activities of most public authorities.

For more information visit  ombudsman.vic.gov.au

IBAC

One of the Independent Broad-based Anti-Corruption Commission’s roles is to ensure that members of Victoria Police have regard to the human rights set out in the Charter.

For more information visit ibac.vic.gov.au

Other specialist bodies

There may be other people who can help you consider the human rights issues in your work. It can be useful to draw on their experience and help in considering options available. Within government, this includes roles like the Senior Practitioner, the Chief Psychiatrist, the Public Advocate, the Principal Commissioner for Children and Young People, the Commissioner for Aboriginal Children and Young People, the Disability Services Commissioner, the Health Services Commissioner, and the Privacy Commissioner.
In international law, human rights are set down in agreements between governments, called treaties or conventions. International human rights treaties provide an agreed set of human rights standards and establish ways to monitor the way a treaty is implemented.

Countries that ratify a treaty voluntarily accept legal obligations under international law to uphold these human rights.

The modern concept of human rights dates back to the end of the Second World War. The international community was determined to put in place safeguards to ensure the atrocities committed against civilians during the war could never be repeated.

After the war, the United Nations was founded to maintain international peace and security, develop friendly relations among nations, and promote social progress and human rights. Australia was one of the 51 founding member states of the United Nations.

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations in 1948. It lays out the rights and freedoms to which all human beings are entitled. A number of treaties and conventions followed which Australia has become a party to. This means that Australia has obligations under international law to respect, promote and protect human rights.

Australia is party to the seven key human rights treaties:

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic, Social and Cultural Rights
3. Convention on the Rights of the Child
4. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
5. Convention on the Elimination of All Forms of Racial Discrimination
6. Convention on the Elimination of All Forms of Discrimination against Women
7. Convention on the Rights of Persons with Disabilities

Further information on international human rights treaties is available at the Australian Government Attorney-General’s Department website ag.gov.au/humanrights

Australia has been a party to international human rights conventions for decades. These treaties place legal obligations on the Australian Government to protect, promote, respect and fulfil human rights. This can only be carried out with the support of Australia’s State and Territory governments.

People in Australia can make complaints to the Australian Human Rights Commission about federal government authorities breaching human rights.

When they have exhausted all domestic remedies, people can sometimes also make complaints to UN treaty bodies under a number of the international conventions.

Additional information on human rights protection at the federal government level is available on the Australian Human Rights Commission website humanrights.gov.au
Further resources

Victoria

Charter of Human Rights and Responsibilities Act 2006
austlii.edu.au/au/legis/vic/consol_act/cohrra2006433/


‘Protecting Us All’ website for community engagement, Victorian Equal Opportunity and Human Rights Commission humanrights.vic.gov.au

Australia’s Human Rights Framework


Australian Human Rights Commission humanrights.gov.au

International law

Office of the High Commissioner for Human Rights (United Nations) ohchr.org

International Covenant on Civil and Political Rights ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

International Covenant on Economic, Social and Cultural Rights ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

Convention on the Rights of the Child ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx

Convention on the Elimination of All Forms of Racial Discrimination ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

Convention on the Elimination of All Forms of Discrimination against Women ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx

Appendix 1 – Human rights triggers

Set out below are some examples of where human rights can be relevant to the work of public authorities in Victoria. The table steps through each Charter right and provides guidance on the types of issues that can have an impact on that right. This is not an exhaustive list, but is used here to provide some context for the Charter rights.

<table>
<thead>
<tr>
<th>This right could be relevant…</th>
<th>…if what you propose to do</th>
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</table>
| Recognition and equality before the law (section 8) | • Provides for the delivery of an entitlement or service to some groups but not others.  
• Assists or recognises the interests of Aboriginal persons or members of other ethnic groups.  
• Is stated in neutral terms but has a disproportionate impact on a sector of the community whose members have one or more protected attributes under the *Equal Opportunity Act 2010* (for example, sex, race, age, or disability).  
• Deals with any of the human rights set out in the Charter in a discriminatory way: for example, if legislation curtails freedom of expression if a person has engaged in industrial activity.  
• Sets age bands that are expressed as protective measures, graduated entitlements (for example, driver licensing), or statements of legal capacity (for example, voting).  
• Establishes eligibility requirements for access to services or assistance (such as legal aid).  
• Contains measures that aim to assist people who have been socially, culturally or economically disadvantaged.  
• Takes steps to diminish or eliminate conditions that have resulted in specific groups within society being disadvantaged (positive discrimination).  
• Regulates access to infrastructure and public facilities including buildings, roads, transport, schools, housing, and hospitals.  
• Affects information and communications services including electronic services.  
• Regulates access to public services including education, healthcare, the justice system, courts, voting, and advocacy.  
• Provides for mobility aids, assistive devices and technologies designed for people with disabilities.  
• Sets standards or guidelines for access to facilities and services to ensure businesses that provide public services take into account access for people with disabilities. |
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<th>This right could be relevant...</th>
<th>...if you propose to do</th>
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<tr>
<td><strong>Right to life (section 9)</strong></td>
<td>• Impacts on the way that essential services are provided, or on how and whether these services can be accessed in a way that impacts on the welfare or safety of persons (such as medical or welfare services).</td>
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<td>• Impacts on the delivery of medical resources for patients.</td>
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<td>• Impacts on procedures for the management of those held in your care.</td>
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<td>• Creates or amends law, policy or practices permitting law enforcement officers to use force, including the use of weapons in the course of their duties.</td>
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<td>• Creates or amends a law withholding or requiring medical treatment, or relates to coronial inquests.</td>
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<td></td>
<td>• Relates to investigation into the conduct of public authorities, especially when people die while in the care of public authorities, for example, deaths in custody or of children in the child protection system.</td>
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<td>• Impacts on the right to maternal decision-making.</td>
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<td><strong>Protection from cruel, inhuman or degrading treatment (section 10)</strong></td>
<td>Affects the wellbeing of a person in a manner that may:</td>
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<td>(this includes the right not to be subject to medical or scientific treatment without consent)</td>
<td>• Cause serious physical or mental pain or suffering.</td>
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<td>• Humiliate or debase a person.</td>
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<td></td>
<td>• Creates new powers, or modifies or increases existing powers of police, inspectors or authorised officers or other persons.</td>
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<td>• Removes or restricts the right to complain about service delivery.</td>
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<td>• Removes or restricts the right to complain of mistreatment by a public authority, or limits those with a role of conducting independent scrutiny to places of detention.</td>
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<td></td>
<td>• Affects the operation of detention facilities and conditions attached to all forms of state care and detention (including access to goods and services, such as medical treatment, while in detention).</td>
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<td>• Creates new types of penalties (including mandatory minimum sentences, and limits to or denial of a service).</td>
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<td>• Authorises changes to rules of evidence or procedure that would allow for evidence obtained as a result of torture, inhuman or degrading treatment, to be used in courts or tribunals.</td>
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<td>• Introduces or permits corporal punishment by a public authority.</td>
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<td>• Authorises a person to be searched or puts in place procedures for conducting searches.</td>
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<td>• Regulates the treatment of persons located at any site for which a public authority is responsible, including: a public hospital, an approved mental health service, a prison, a government school, a disability or aged care service, and supported residential service.</td>
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<td></td>
<td>• Allows for prolonged periods of segregation or other particularly harsh prison regimes.</td>
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<td>• Involves crisis intervention strategies or behavioural management plans that include the use of seclusion, chemical restraint or physical restraint.</td>
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<td>• Defines and regulates procedures for obtaining consent to medical treatment and experiments.</td>
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<td></td>
<td>• Regulates medical treatment of persons without their consent.</td>
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<td>• Regulates the conduct of medical or scientific research.</td>
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<td>This right could be relevant…</td>
<td>…if what you propose to do</td>
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<td>Freedom from forced work</td>
<td>• Compels the provision of any labour or the performance of any service under threat of a penalty.</td>
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<td>(section 11)</td>
<td>• Gives a minister or public authority the power to employ or direct people to perform work in a vital industry or during a state of emergency.</td>
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<td>• Relates to people trafficking.</td>
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<td>Freedom of movement</td>
<td>• Limits the ability of a person to choose where to live in Victoria.</td>
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<td>(section 12)</td>
<td>• Restricts the movement of people as part of the criminal process, for example the imposition of bail conditions.</td>
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<td>• Allows for an intervention order against a person, or enables their detention.</td>
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<td></td>
<td>• Proposes surveillance of an individual.</td>
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<td></td>
<td>• Empowers public authorities to restrict people’s movement based on national security considerations.</td>
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<td>• Compels someone to provide information (for example, a subpoena).</td>
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<td>• Regulates access to land based on quarantine considerations, or eligibility requirements permitting exclusion from public land or premises.</td>
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<td>• Affects the conduct of public protests.</td>
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<td>This right could be relevant...</td>
<td>...if what you propose to do</td>
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</table>
| Protection of privacy and reputation (section 13) | • Involves surveillance of persons for any purpose (such as closed-circuit television).  
• Involves collection, storage, use or publication of personal information and how that information is accessed, used or disclosed.  
• Regulates information held on a public register.  
• Restricts access by people to their own personal information.  
• Provides for sharing of personal information across or within agencies.  
• Involves powers of entry, search, seizure, confiscation or forfeiture (including entry into a controlled environment).  
• Allows publication of personal information (for example, results of surveillance, medical tests, or the electoral roll).  
• Provides for a compulsory physical intervention on a person such as a DNA, blood, breath or urine test; forced medical examination; or corporal punishment.  
• Provides for treatment or testing of a patient without their consent.  
• Involves a professional duty of confidentiality.  
• Changes or creates any confidentiality provisions or secrecy provisions relating to personal information.  
• Provides for mandatory disclosure or reporting of information (including disclosure of convictions, injury or illness), or by professionals reporting abuse, for example, doctors regarding patients or teachers regarding students.  
• Regulates a person’s name, private sexual behaviour, sexual orientation or gender identification.  
• Involves the interception, censorship, monitoring or other regulation of postal articles and all other communications.  
• Relates to handling personal information for research or statistics.  
• Recognises or fails to give legal recognition to close or enduring personal relationships.  
• Provides for the removal of children from a family unit or a family intervention order.  
• Regulates tenancy or eviction.  
• Regulates a state-run care facility or mental health service.  
• Regulates standards, consultation and procedures operating in respect of public housing.  
• Authorises compulsory acquisition of a home or regulates planning or environmental matters that may affect a person’s home. |
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<thead>
<tr>
<th>This right could be relevant...</th>
<th>…if what you propose to do</th>
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</table>
| Freedom of thought, conscience, religion and belief (section 14) | • Promotes, restricts or interferes with a particular religion or set of beliefs.  
• Requires a person to disclose their religion or belief.  
• Affects an individual’s ability to adhere to their religion or belief.  
• Impinges upon or disadvantages a person because of the person’s opinions, thoughts or beliefs.  
• Attempts to regulate conduct that will affect some aspect of a person’s worship, observance, practice or teaching of their religion or belief.  
• Subjects conduct that is required or encouraged by an individual’s religion or beliefs to criminal penalties or fines.  
• Restricts the capacity for those under state control (for example, prisoners) to comply with the requirements of their religion.  
• Compels certain acts that may be inconsistent with a religion or set of beliefs.  
• Restricts the capacity for those in your care or control to comply with the requirements of their religion.  
• Sets dress codes (possibly for safety or hygiene reasons) that do not accommodate religious dress.  
• Imposes requirements as a condition of receiving a benefit that prevents a person from adhering to their religion or belief.  
• Requires students to learn about particular religions or beliefs or to be taught materials that might have the effect of undermining their religious beliefs.  
• Regulates planning or land use that may make it difficult to use or establish places of religious worship. |
| Freedom of expression (section 15) | • Regulates the manner, content and format of any public expression (for example, the contents of a speech, publication, broadcast, display or promotion). Examples could include requiring prior approval for public protest or restricting where protest activity can take place.  
• Censors materials or requires that they be reviewed or approved before being published.  
• Compels someone to provide information (for example, a subpoena).  
• Imposes a dress code.  
• Regulates or restricts an individual’s access to information (including access to material on the internet).  
• Attaches criminal or civil liability to publication of opinions or information. |
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<th>This right could be relevant...</th>
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| **Peaceful assembly** and freedom of association (section 16) | • Regulates membership of groups or associations.  
• Limits the ability of a person or group of people to exercise their right to peacefully protest or to come together for a common purpose.  
• Treats people differently on the basis of their membership of a group or association, for example, trade unions.  
• Creates disincentives or confers preferences for membership in a group or association (including a disclosure requirement).  
• Prohibits membership in a group or association, for example a motorcycle gang. |
| **Protection of families and children** (section 17) | • Affects the law regarding close or enduring personal relationships or fails to give legal recognition to these relationships.  
• Affects any aspect of care of children, including children cared for by parents, guardians, informal carers, children in out-of-home care, children with a disability, or parents or carers with a disability.  
• Relates to treatment of children in the criminal process.  
• Relates to family violence.  
• Affects adoption or surrogacy.  
• Regulates the obligations of family members towards each other, including parents and guardians towards children.  
• Provides for the separation and removal of children from parents or guardians or other adults responsible for their care.  
• Regulates family contact for those in your care or enables intervention orders to be granted between family members.  
• Affects the welfare of children within the family or state care.  
• Regulates family contact of prisoners or others in involuntary state care.  
• Creates a regime for giving children access to information about biological parents when the child has been adopted or born using assisted reproductive technology.  
• Deals with the division of estates on intestacy. |
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<tr>
<td>Entitlement to participate in public life (section 18)</td>
<td>• Limits the ability to take part in municipal and parliamentary elections.</td>
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<td>• Requires individuals to meet certain conditions in order to be eligible to participate in municipal and parliamentary elections.</td>
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<td>• Regulates how individuals vote in elections (for example, the method of voting).</td>
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<td>• Regulates eligibility and access to employment in the public service or appointment to public office.</td>
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<td>• Establishes requirements for membership of public bodies.</td>
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<td>• Regulates the conduct of elections and the electoral process.</td>
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<td>• Regulates the suspension and conduct of local government.</td>
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<td>• Regulates the suspension and removal of statutory office holders.</td>
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<td>• Regulates electoral processes including funding of and expenditure by political parties and the drawing of electoral boundaries.</td>
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<td>• Affects communication of information and ideas about public and political issues.</td>
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<td>• Affects the ability of someone to participate in local council meetings.</td>
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<td>Cultural rights (section 19)</td>
<td>• Limits the observance of any religious practices.</td>
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<td>• Addresses discrimination based on attributes including race or religion.</td>
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<td>• Restricts the capacity for persons to declare or make public their affiliation to a particular racial, religious or cultural group.</td>
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<td>• Limits or prohibits communication in languages other than English, including through the provision of information.</td>
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<td>• Prevents people using their language in community with others.</td>
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<td>• Limits the ability of Aboriginal persons or members of an ethnic group to take part in a cultural practice, or otherwise interferes with their distinct cultural practices.</td>
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<td>• Regulates the conduct of commercial activities on the traditional lands of Aboriginal persons.</td>
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<td>• Restricts the provision of services or trade on religious holidays.</td>
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<td>• Regulates access to public spaces including libraries, museums, and sports facilities.</td>
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<td>• Regulates cultural or religious practices around the provision of secular public education.</td>
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<td>• May interfere with the relationship between Aboriginal people and land, water and resources.</td>
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<td>• Imposes or coerces individuals to do something that interferes with their distinct cultural practices, for example, wear clothes that differ from their traditional cultural attire.</td>
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<td>• Regulates traditional medical practices.</td>
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<td>• Licenses or provides a restriction on the preparation and serving of food.</td>
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<td>This right could be relevant…</td>
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| **Property rights (section 20)** | - Provides for acquisition, seizure or forfeiture of a person’s property under civil or criminal law.  
- Confers on a public authority a right of access to private property.  
- Limits or terminates property rights (for example, by legislation which establishes a limitation period).  
- Restricts the use of private property (for example, under planning laws).  
- Restricts or regulates established patterns of access (especially for commercial or business purposes) to public property.  
- Implements government control over its own property (for example, resumption of land).  
- Impounds or suspends registration of a motor vehicle. |
| **Right to liberty and security (section 21)** | - Authorises a person to be detained for treatment in a mental health facility and facilitates review of their detention.  
- Provides for the interim detention of a person whether or not he or she is suspected of committing an offence (for example, to prevent the spread of a contagious disease, or enable a person to ‘sober up’).  
- Provides for special powers of detention of people for purposes including national security.  
- Makes provision for granting of bail.  
- Relates to the management of security of anyone in your care, particularly those in involuntary care.  
- Makes it an offence for a person to fail to remain at a place (for example, for further questioning or to conduct a search or test by a police officer or other official).  
- Allows a public authority to cordon an area and control movement within that area.  
- Grants a power of arrest.  
- Relates to the safety of a person and their wellbeing. Note: This is not limited to a custodial setting and includes the risk of violence or other harm. |
| **Humane treatment when deprived of liberty (section 22)** | - Enables you to detain individuals or relates to the conditions under which a person may be detained for example, in prisons, mental health services or prison transportation facilities.  
- Concerns standards and procedures for treatment of those who are detained (for example, use of force, dietary choice, and access to private shower and toilet facilities).  
- Authorises a person to be held in a place with limited facilities or services for the care and safety of detainees.  
- Enables enforcement officers to undertake personal searches of those individuals detained in custody or detainee visitors. |
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<td>Children in the criminal process (section 23)</td>
<td>• Enables you to detain children for any length of time.</td>
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<td>• Authorises you to hold children in amenities that have limited facilities or services for the care and safety of children.</td>
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<td>• Enables you to undertake personal searches of a detained child.</td>
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<td>• Impacts on the environmental design of detention centres or conditions under which children are detained.</td>
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<td>• Establishes or alters programs in prisons, youth training centres or residential centres.</td>
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<td>• Affects the speed at which a child may be brought to trial.</td>
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<td>• Creates or amends procedures and the law of evidence applicable to children charged with criminal offences, including the investigation and prosecution of offences.</td>
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<td>• Amends the law relating to children in criminal proceedings, including bail, adjournments, and sentencing.</td>
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<p>| A fair hearing (section 24) | • Creates or restricts review of administrative decision-making and appeals processes.  |
|  | • Reverses the onus of proof.  |
|  | • Regulates the rules of evidence in courts and tribunals or amends the way in which evidence is collected and presented.  |
|  | • Regulates the procedures for challenging the impartiality and independence of courts and tribunals.  |
|  | • Affects the way witnesses give evidence.  |
|  | • Regulates the way the media may report on proceedings.  |</p>
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<td>Rights in criminal proceedings (section 25)</td>
<td>• Impacts on the right to be presumed innocent (including amendments to the law relating to self-incrimination).&lt;br&gt;• Impacts on the bringing of disciplinary actions.&lt;br&gt;• Impacts on the treatment of children in complaint and disciplinary proceedings.&lt;br&gt;• Regulates aspects of criminal trial procedure for investigation and prosecution of offences, for example, establishing time limits on the lodging of complaints or appeals, or affects access of an accused to witnesses, information and evidence, filing and service charges.&lt;br&gt;• Establishes guidelines or procedures for the provision of assistants, translators and interpreters, including Auslan and languages other than English.&lt;br&gt;• Amends any guidelines or procedures enabling the accused to represent themselves personally or restricts the right of an accused to choose a support person or advisor of their choice.&lt;br&gt;• Regulates how an accused person may appear in court, for example, security measures associated with their appearance.&lt;br&gt;• Limits requirements on courts or tribunals to accord fair hearing rights for example, in relation to disclosure of evidence to an accused.&lt;br&gt;• Deals with the admissibility of evidence.&lt;br&gt;• Restricts access to information and material to be used as evidence.&lt;br&gt;• Affects the law of evidence governing examination of witnesses.&lt;br&gt;• Allows special procedures for examination of witnesses, for example, the manner in which they give evidence.&lt;br&gt;• Creates or amends an offence that contains a presumption of fact or law and puts the legal or evidential burden on the accused to rebut the presumption.&lt;br&gt;• Alters the criteria or conditions under which a person may apply for or be released on bail.&lt;br&gt;• Amends or alters procedures under which a person is able to appeal against or review a decision.&lt;br&gt;• Amends the eligibility criteria for legal aid.&lt;br&gt;• Governs remedies available to people whose criminal convictions have been overturned or who have been pardoned in situations involving a miscarriage of justice.&lt;br&gt;• Affects the capacity of investigators and prosecutors to prepare for trial and of courts to conduct trials through allocation of resources.</td>
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<td>Right not to be tried or punished more than once (section 26)</td>
<td>• Allows a person to be punished a second time for the same offence.</td>
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<td>• Amends any criminal procedure rules relating to previous convictions and acquittals.</td>
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<td>• Creates an overlap between an offence in regulations and an offence in the parent Act.</td>
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<td>• Allows continued incarceration of people, for example convicted sex offenders, following completion of sentence.</td>
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<td>Protection from retrospective criminal laws (section 27)</td>
<td>• Seeks to sanction a person for conduct that was not contrary to law at the time the conduct was undertaken.</td>
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<td>• Applies more severe penalties for conduct by a person than those that existed at the time the conduct was undertaken.</td>
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<td>• Fails to apply less severe penalties for conduct by a person if penalties have decreased since the conduct was undertaken.</td>
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<td>• Expands the range of activities that are covered by an existing criminal offence.</td>
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<td>• Amends criminal law procedure that applies to trials for acts done before the legislation commences or introduces new sentencing options to apply to acts done before the legislation was operative.</td>
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<td>• Changes parole conditions that apply to sentences of imprisonment imposed before the legislation commences.</td>
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Appendix 2 – Human rights in the Charter

Section 8 – Recognition and equality before the law
(1) Every person has the right to recognition as a person before the law.
(2) Every person has the right to enjoy his or her human rights without discrimination.
(3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.
(4) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

Section 9 – Right to life
Every person has the right to life and has the right not to be arbitrarily deprived of life.

Section 10 – Protection from torture and cruel, inhuman or degrading treatment
A person must not be—
(a) subjected to torture; or
(b) treated or punished in a cruel, inhuman or degrading way; or
(c) subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.

Section 11 – Freedom from forced work
(1) A person must not be held in slavery or servitude.
(2) A person must not be made to perform forced or compulsory labour.
(3) For the purposes of subsection (2) forced or compulsory labour does not include—
(a) work or service normally required of a person who is under detention because of a lawful court order or who, under a lawful court order, has been conditionally released from detention or ordered to perform work in the community; or
(b) work or service required because of an emergency threatening the Victorian community or a part of the Victorian community; or
(c) work or service that forms part of normal civil obligations.
(4) In this section court order includes an order made by a court of another jurisdiction.

Section 12 – Freedom of movement
Every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

Section 13 – Privacy and reputation
A person has the right—
(a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
(b) not to have his or her reputation unlawfully attacked.
Section 14 – Freedom of thought, conscience, religion and belief

(1) Every person has the right to freedom of thought, conscience, religion and belief, including—
   (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, in public or in private.

(2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Section 15 – Freedom of expression

(1) Every person has the right to hold an opinion without interference.

(2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether—
   (a) orally; or
   (b) in writing; or
   (c) in print; or
   (d) by way of art; or
   (e) in another medium chosen by him or her.

(3) Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary—
   (a) to respect the rights and reputation of other persons; or
   (b) for the protection of national security, public order, public health or public morality.

Section 16 – Peaceful assembly and freedom of association

(1) Every person has the right of peaceful assembly.

(2) Every person has the right to freedom of association with others, including the right to form and join trade unions.

Section 17 – Protection of families and children

(1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.

(2) Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

Section 18 – Taking part in public life

(1) Every person in Victoria has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives.

(2) Every eligible person has the right, and is to have the opportunity, without discrimination—
   (a) to vote and be elected at periodic State and municipal elections that guarantee the free expression of the will of the electors; and
   (b) to have access, on general terms of equality, to the Victorian public service and public office.

Section 19 – Cultural rights

(1) All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language.

(2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—
   (a) to enjoy their identity and culture; and
   (b) to maintain and use their language; and
   (c) to maintain their kinship ties; and
   (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

Section 20 – Property rights

A person must not be deprived of his or her property other than in accordance with law.
Section 21 – Right to liberty and security of person

(1) Every person has the right to liberty and security.

(2) A person must not be subjected to arbitrary arrest or detention.

(3) A person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

(4) A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against him or her.

(5) A person who is arrested or detained on a criminal charge—
   (a) must be promptly brought before a court; and
   (b) has the right to be brought to trial without unreasonable delay; and
   (c) must be released if paragraph (a) or (b) is not complied with.

(6) A person awaiting trial must not be automatically detained in custody, but his or her release may be subject to guarantees to attend—
   (a) for trial; and
   (b) at any other stage of the judicial proceeding; and
   (c) if appropriate, for execution of judgment.

(7) Any person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of his or her detention, and the court must—
   (a) make a decision without delay; and
   (b) order the release of the person if it finds that the detention is unlawful.

(8) A person must not be imprisoned only because of his or her inability to perform a contractual obligation.

Section 22 – Humane treatment when deprived of liberty

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

(2) An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary.

(3) An accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.

Section 23 – Children in the criminal process

(1) An accused child who is detained or a child detained without charge must be segregated from all detained adults.

(2) An accused child must be brought to trial as quickly as possible.

(3) A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.

Section 24 – Fair hearing

(1) A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

(2) Despite subsection (1), a court or tribunal may exclude members of media organisations or other persons or the general public from all or part of a hearing if permitted to do so by a law other than this Charter.

Note

For example, section 19 of the Supreme Court Act 1986 sets out the circumstances in which the Supreme Court may close all or part of a proceeding to the public. See also section 80AA of the County Court Act 1958 and section 126 of the Magistrates’ Court Act 1989.

(3) All judgments or decisions made by a court or tribunal in a criminal or civil proceeding must be made public unless the best interests of a child otherwise requires or a law other than this Charter otherwise permits.
Section 25 – Rights in criminal proceedings

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

(2) A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees—

(a) to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication that he or she speaks or understands; and

(b) to have adequate time and facilities to prepare his or her defence and to communicate with a lawyer or advisor chosen by him or her; and

(c) to be tried without unreasonable delay; and

(d) to be tried in person, and to defend himself or herself personally or through legal assistance chosen by him or her or, if eligible, through legal aid provided by Victoria Legal Aid under the Legal Aid Act 1978; and

(e) to be told, if he or she does not have legal assistance, about the right, if eligible, to legal aid under the Legal Aid Act 1978; and

(f) to have legal aid provided if the interests of justice require it, without any costs payable by him or her if he or she meets the eligibility criteria set out in the Legal Aid Act 1978; and

(g) to examine, or have examined, witnesses against him or her, unless otherwise provided for by law; and

(h) to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses for the prosecution; and

(i) to have the free assistance of an interpreter if he or she cannot understand or speak English; and

(j) to have the free assistance of assistants and specialised communication tools and technology if he or she has communication or speech difficulties that require such assistance; and

(k) not to be compelled to testify against himself or herself or to confess guilt.

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

(4) Any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in respect of it reviewed by a higher court in accordance with law.

Section 26 – Right not to be tried or punished more than once

A person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.

Section 27 – Retrospective criminal laws

(1) A person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in.

(2) A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed.

(3) If a penalty for an offence is reduced after a person committed the offence but before the person is sentenced for that offence, that person is eligible for the reduced penalty.

(4) Nothing in this section affects the trial or punishment of any person for any act or omission which was a criminal offence under international law at the time it was done or omitted to be done.
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