

HUMAN RIGHTS COMPATIBILITY ASSESSMENT TOOL

The Victorian Charter of Human Rights and Responsibilities (the Charter) is an agreed set of human rights, freedoms and responsibilities protected by law.

Council must observe these rights when making decisions, creating local laws, setting policies and providing services.

This assessment tool is designed to help staff undertake a thorough and methodical assessment of any proposed / recommended policy, plan, procedure or decision and identify whether it impacts upon any of the protected rights or freedoms.

Ensure this assessment is registered in ECM with the policy, plan, procedure or decision for corporate records.

Date of Assessment	
Completed by	
Responsible Director	
Name of plan, policy, procedure, decision, etc	

1. What is the objective of the proposed / recommended policy, plan, procedure or decision?

Here you should briefly set out the basic objective(s) of the policy, plan, procedure or decision. You should cover the following points, as appropriate:

- Why is it needed?
- What is its purpose?

It will be useful to also consider who will be affected. You should look at the objective(s) you are trying to achieve and think about what groups of people are most likely to be affected by it. Answering this question at this stage is important because it will help you at the next step when you will be asked to decide whether or not the policy, plan, procedure or decision has anything to do with human rights.

Your Assessment:

2. Is the proposed / recommended policy, plan, procedure or decision likely to engage one or more human rights recognised under the Victorian Charter of Human Rights?

Look through the below **Compatibility Matrix** which sets out the rights under the Charter and consider whether or not any right may be engaged by the proposed policy, plan, procedure or decision.

If you decide that the policy, plan, procedure or decision might engage a human right, you will need to progress to **Question 3** to consider how the right is engaged and whether it is limited.

[If you decide that no human rights are engaged, there is no need to continue with this assessment tool.]

Right to consider	Your Assessment - Does the policy, plan, procedure or decision engage the right?
FREEDOM	
<p>Freedom of movement, expression, assembly and association</p> <p><i>People have the right to assemble and meet peacefully, to freely associate with others and to form and join trade unions.</i></p> <p><i>People who are lawfully in Victoria have the right to enter and leave the State, to move around freely within it and to freely choose where they live.</i></p> <p><i>People have the right to hold opinions without interference from the government or from other people. People have the right to seek out, receive and pass on information and ideas of all kinds.</i></p>	
<p>Right to liberty and security</p> <p><i>Everyone has the right to freedom and security.</i></p>	
<p>A fair hearing</p> <p><i>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.</i></p>	
<p>Right not to be tried or punished more than once</p> <p><i>A person must not be tried or punished more than once for the same offence if he or she has already been convicted or acquitted of that offence in court.</i></p>	

<p>Rights in criminal proceedings</p> <p><i>A person who is charged with a crime has the right to be presumed innocent until proven guilty, to be informed of their charge and tried without unreasonable delay, the right not to be compelled to testify or confess guilt and the right to have any conviction and sentence reviewed by a higher court.</i></p>	
<p>Retrospective criminal laws</p> <p><i>A person has the right not to be prosecuted or punished for acts or omissions that were not criminal offences at the time they were committed.</i></p>	
<p>Freedom of thought, conscience, religion and belief</p> <p><i>People have the freedom to have or choose a religion or belief, and the freedom to demonstrate their religion or belief. They can do this privately or publicly – at home, at work or in a place of worship – as part of a group or alone.</i></p>	
<p>Property rights</p> <p><i>A person must not be deprived of his or her property except in accordance with law.</i></p>	
<p>Freedom from forced work</p> <p><i>A person must not be held in slavery or servitude, or forced to work, except as part of normal civil obligations, as part of a court order, or during emergency situations.</i></p>	
RESPECT	
<p>Right to life</p> <p><i>Every person has the right to life and the right not to be arbitrarily deprived of life.</i></p>	
<p>Protection of families and children</p> <p><i>Families are entitled to be protected by society and the State. Children have the right to protection according to their best interests, without discrimination.</i></p>	
<p>Cultural rights, including recognition that human rights have a special importance for the Aboriginal people of Victoria</p> <p><i>People of all cultural, religious, racial or linguistic backgrounds have the right to enjoy their culture, declare and practice their religion and use their languages.</i></p>	

EQUALITY**Equal recognition before the law**

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

Entitlement to participate in public life (including voting)

Every person has the right to take part in public affairs without discrimination. Every eligible person has the right to vote, be elected and to have equal access to the Victorian public service and public office.

DIGNITY**Protection from torture and cruel inhumane or degrading treatment, medical or scientific experimentation or treatment without consent**

A person must not be tortured, treated or punished in a cruel, inhumane or degrading way. A person must not be subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.

Protection of privacy and reputation

A person's personal privacy, family, home or correspondence cannot be unlawfully or arbitrarily interfered with.

Humane treatment when deprived of liberty

All persons deprived of liberty by arrest or detention must be treated with humanity and with respect for the inherent dignity of the person.

3. Does the proposed / recommended policy, plan, procedure or decision limit any human right?

If you have identified above that a right is engaged by the policy, plan, procedure or decision, you will now need to use the **compatibility matrix** below to assess whether any right you have identified above is limited by the policy, plan, procedure or decision.

If you do decide that there is a possibility of a right being limited, you will need to determine whether such a limitation is justifiable. This is assessed at **Question 4**.

[If you decide that although a right is engaged, the policy, plan, procedure or decision will not result in any limitation of that right, then you do not need to proceed with this assessment tool.]

Right to consider	Possible limitations	Your Assessment - Does the policy, plan, procedure or decision limit the right?
FREEDOM		
Freedom of movement, expression, assembly and association	<ul style="list-style-type: none"> • Limits the ability of a person to choose where to live. • Proposes surveillance of an individual's movements. • Limits the ability to move through, remain in, or enter or depart from areas of public space or on private land. • Regulates the format of any expression (eg speech, publication, broadcast, display or promotion). • Censors materials or requires review / approval before publication. • Regulates / restricts an individual's access to information (including via the internet). • Penalises or disadvantages any person on the basis of their opinions. • Limits the right to peacefully protest or to come together for a common purpose. • Compels membership, or differentiates on the basis of membership of a group, association, or professional body. 	
Right to liberty and security	<ul style="list-style-type: none"> • Authorises the detention of a person with a mental illness. • Relates to the management of security of anyone in your care, especially those in involuntary care. 	
A fair hearing	<ul style="list-style-type: none"> • Regulates complaints procedures, restricts review of administrative decision-making or appeals processes, or their impartiality. • Reverses the onus of proof of a matter or regulates the way in which 'evidence' is collected and presented. 	

Right not to be tried or punished more than once	<ul style="list-style-type: none"> • Allows a person to be punished a second time for the same 'offence'. 	
Rights in criminal proceedings	<ul style="list-style-type: none"> • Affects the presumption of innocence. • Deals with the admissibility of 'evidence' or restricts access to material to be used as 'evidence'. • Regulates the procedures for investigation and prosecution of 'offences' or the bringing of disciplinary actions. • Regulates requests to appeal/review a decision, or establishes time limits on the lodging of complaints or appeals. • Regulates the representation of an 'accused', or their access to support persons, advisors, assistants, or interpreters. 	
Retrospective criminal laws	<ul style="list-style-type: none"> • Imposes sanctions for conduct that, at the time undertaken, was not contrary to policy, procedure or practice. • Applies more severe penalties for conduct than existed at the time the conduct was undertaken. • Fails to apply less severe penalties if penalties have decreased since the conduct was undertaken. 	
Freedom of thought, conscience, religion and belief	<ul style="list-style-type: none"> • Promotes, restricts or interferes with religion or beliefs or requires disclosure of religion or belief. • Impinges upon or disadvantages a person because of the person's opinions, thoughts or beliefs. • Affects a person's worship, observance, practice, teaching, or proselytising their religion or belief. • Requires acts or conduct, or imposes conditions on benefits that prevent adherence to religion or belief. • Sets dress codes (possibly for safety or hygiene reasons) that do not accommodate religious dress. • Restricts the capacity for those in your care or control to comply with the requirements of their religion. 	
Property rights	<ul style="list-style-type: none"> • Provides for acquisition, seizure or forfeiture of a person's property. 	
Freedom from forced work	<ul style="list-style-type: none"> • Compels the provision of any labour or the performance of any service under threat of a penalty. 	

RESPECT

<p>Right to life</p>	<ul style="list-style-type: none"> • Impacts on the way services are provided, or how and whether these services can be accessed. • Establishes procedures for the management of those held in your care. 	
<p>Protection of families and children</p>	<ul style="list-style-type: none"> • Affects the ability to form and maintain close or enduring personal relationships or fails to recognise them. • Regulates the obligations of family members towards each other, including parents and guardians towards children. • Affects the welfare of children within the family or your care. 	
<p>Cultural rights, including recognition that human rights have a special importance for the Aboriginal people of Victoria</p>	<ul style="list-style-type: none"> • Limits the observance of any religious practices, regardless of the religion. • Restricts people's capacity to declare or make public their affiliation to a particular racial, religious or cultural group. • Limits or prohibits communication in languages other than English, including through the provision of information. • 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. • Restricts the provision of services or trade on religious holidays. • Relates to the preparation and serving of food. • May interfere with the relationship between Aboriginal persons and land, water and resources. 	

EQUALITY

<p>Equal recognition before the law</p>	<ul style="list-style-type: none"> • Attempts to assist those who are socially, culturally and/or economically disadvantaged. • Positively discriminates to diminish or eliminate conditions that have resulted in specific groups being disadvantaged. • Provides for the delivery of a service to some but not others. • Disproportionately impacts on those with a protected attribute under the Equal Opportunity Act (EOA). • Restricts eligibility by reference to age or other protected attribute under the EOA. 	
<p>Entitlement to participate in public life (including voting)</p>	<ul style="list-style-type: none"> • Limits the ability to take part in municipal and parliamentary elections. • Regulates participation in public affairs / decision making. 	

DIGNITY

<p>Protection from torture and cruel inhumane or degrading treatment, medical or scientific experimentation or treatment without consent</p>	<ul style="list-style-type: none"> • Affects the physical or mental well-being of a person in a manner that may cause serious physical or mental pain or suffering, or humiliate or debase a person (albeit non-intentionally). • Removes or restricts the right to complain about service delivery. • Affects the conditions attached to all forms of State care and detention. • Authorises a person to be searched or puts in place procedures for conducting searches. • Regulates the treatment of persons at, for example, an approved mental health service, a disability or aged care service, or supported residential service. 	
<p>Protection of privacy and reputation</p>	<ul style="list-style-type: none"> • Involves surveillance of persons for any purpose, such as closed-circuit television (CCTV). • Involves collection and/or publication of personal information and how it is accessed, used or disclosed. • Involves powers of entry, search, seizure, confiscation or forfeiture. • Provides for treatment or testing of a service user without his or her consent. • Involves a professional duty of confidentiality. • Provides for mandatory disclosure or reporting of information (eg of convictions, injury or illness). • Restricts access by individuals to their own personal information. • Changes or creates any confidentiality provisions or secrecy provisions relating to personal information. • Regulates the storage, security or retention of personal information. • Creates an identification system or proposes to link/match personal information across or within agencies. • Relates to handling personal information for research or statistics. • Involves the interception, censorship, monitoring or other regulation of postal articles and all other communications. 	
<p>Humane treatment when deprived of liberty</p>	<ul style="list-style-type: none"> • Enables you to detain individuals or relates to the conditions under which a person may be detained. 	

4. Is the limitation reasonable, necessary, justified and proportionate?

A. What is the nature of the right?

Consider the right that is being limited. What right does it provide? Who does it apply to? Why is it a human right that should be protected? How important is the right to a democratic society?

Your Assessment:

B. What is the nature and extent of the limitation?

Here you should consider the limitation that is being applied to the right. How does the limitation affect persons protected under the Charter? How many people does it affect? How much does the limitation affect a person's way of life? What are the potential consequences of the limitation?

Your Assessment:

C. What is the importance of the purpose of the limitation?

Why, in the particular circumstances, is limiting the right important? Why is there a real need for the limitation being proposed? Look at the objective(s) you identified in Question 1 and consider whether it addresses an area of public or social concern that is pressing and substantial enough to warrant limiting the right. Your explanation should provide relevant and sufficient reasons and briefly describe the consequences of not implementing the plan, policy, procedure or decision.

If you decide that the objective for limiting the right does not seem to be important or significant your plan, policy, procedure or decision is likely to be incompatible with human rights. You will need to think about whether there are other ways to achieve the objective without limiting the right.

If the objective for the limitation does appear to be important and significant, proceed to **Part D**

Your Assessment:

D. What is the relationship between the limitation and its purpose?

Here you should describe the effect of the limitation of the right and whether it is likely to be effective in achieving the objective being sought. Refer back to your answer to Question 1 – think about the problem that the limitation is seeking to address and consider whether the limitation will in fact result in a reduction of that problem. You should be able to establish a rational connection between the legitimate aim to be achieved and the measure limiting the right. If the objective might be legitimate but unless the proposed measure will actually achieve that objective, the limitation of the right is likely to be impermissible.

If you decide that the limitation is not rationally connected to the objective your plan, policy, procedure or decision is likely to be incompatible with human rights. You will need to think about whether there are other ways to achieve the objective without limiting the right.

If you decide that the limitation is likely to be effective in achieving the objective being sought, proceed to **Part E**.

Your Assessment:

E. Are there any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve?

Here you should assess whether the limitation of the right is no more restrictive than it needs to be in order to achieve its objective. Answering the following questions will help you to assess whether the limitation of the right is reasonable, necessary and proportionate:

- Are there less restrictive alternatives for achieving the objective, and have they been tried? Look at the objectives you identified at Question 1 and consider whether these outcomes can be achieved only by the proposed limitation of the right. If there is another less restrictive way of achieving the desired outcome, you must explain why that option was not taken.
- Does the limitation involve a blanket restriction or does it allow for different cases to be treated differently? Blanket restrictions will often be considered disproportionate, as it has the effect of imposing limitations in circumstances where they are not really needed.
- Has sufficient regard been paid to the rights and interests of those affected? Proportionality requires that even if the objective of the limitation is of sufficient importance and it has been carefully designed to limit the right as little as possible, it may still not be justified, because of the severity of the effects of the measure on individuals or groups.
- Do safeguards exist to ensure effective guarantees of human rights in practice? For example, does the limiting measure make appropriate provision for procedural fairness and/or effective judicial oversight? Have any discretionary powers been appropriately circumscribed to prevent the risk of abuse or arbitrary exercise of the discretion?

Does the limitation destroy the very essence of the right? Think about the right being limited and consider whether there will be anything left of the right after the restrictions are put in place. Remember that no restriction is ever justified if it impairs the very essence of a right.

If your assessment concludes that the limitation is proportionate, the proposed / recommended plan, policy, procedure or decision is likely to be compatible with human rights.

If you decide that the effect of the limitation is likely to be disproportionate to the objective being sought, your proposed / recommended plan, policy, procedure or decision is likely to be incompatible with human rights. You will need to think about whether there are other ways to achieve the objective of the plan, policy, procedure or decision without limiting the right.

Your Assessment:

Final Assessment:

Is the policy, plan, procedure or decisions compatible with the Victorian Charter of Human Rights and Responsibilities?

Compatible

Incompatible