

Pyrenees Shire

<h2>Human Rights Charter Guidelines</h2>
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What are Human Rights?

Human rights are the basic rights that belong to all of us for the simple fact that we are human beings. They are the basic standards required for governments, societies and communities to operate in a respectful and peaceful manner.

Everyone has the same human rights: men, women, and children, rich and poor, and all nationalities and faiths. Human rights are about recognising and respecting the dignity of other people. Our human rights entitlements include:

- Civil and political rights
- Economic and social rights
- Environmental and cultural rights.

The Victorian Charter of Human Rights

The Victorian *Charter of Human Rights and Responsibilities Act 2006* came into operation with application to local government on 1 January 2008.

The Charter is an agreed set of human rights, freedoms and responsibilities protected by law. The Charter provides equal protection to all people in Victoria (not corporations). It contains 20 rights that reflect four basic principles. These principles are Freedom, Respect, Equality and Dignity (F.R.E.D.).

Victorian Councils must now, by law, act in a way that is consistent with the human rights protected under the Charter and take human rights into account in the preparation of Local Laws, Council Policies and Service Provision.

In fact, section 38(1) of the Charter states that: *“it is 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.”*

The focus of the legislation is on the prevention of breaches of human rights rather than on enforcement. It is designed to ensure that governments, including local councils, anticipate and prevent potential human rights infringements at the earliest possible stage.

It is important for all staff to be aware and to question things that they feel may not be compatible with the Charter.

These guidelines have been developed to assist staff to make assessments against the Charter and thereby ensure compliance.

Charter Principles

For a full explanation of the rights, please refer to [Appendix A](#).

FREEDOM	<ul style="list-style-type: none">• Freedom from forced work• Freedom of movement• Freedom of thought, conscience, religion and belief• Freedom of expression• Right to peaceful assembly and freedom of association• Property rights• Right to liberty and security of person• Fair hearing• Rights in criminal proceedings• Right not to be tried and punished more than once• Protection from retrospective criminal laws
RESPECT	<ul style="list-style-type: none">• Right to life• Protection of families and children• Cultural rights, including recognition that human rights have a special importance for the Aboriginal people of Victoria
EQUITY	<ul style="list-style-type: none">• Recognition and equality before the law• Entitlement to participate in public life (including voting)
DIGNITY	<ul style="list-style-type: none">• Prohibition on torture and cruel, inhuman or degrading treatment• Protection of privacy and reputation• Humane treatment when deprived of liberty• Appropriate treatment of children in the criminal process

Whilst not all of these rights will be impacted by the function of local government, the wide range of activities and services that we deliver, make our role critical to the Charters success.

Limiting Rights

The Charter allows for the rights to be reasonably limited by balancing the rights of the individual and the rights of the broader community. It doesn't over-ride existing laws, and therefore decisions must still be made and actions undertaken in compliance with the law. The following factors should be taken into account:

- 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.

Impacts on Council

There are two main impacts on Council arising from the Charter:

Impacts on Service Delivery

When service delivery options are being developed or reviewed, officers must ensure an assessment of human rights is undertaken. For example, if Council provides a service that does not recognise a particular cultural groups needs, a person may complain that their human rights have been breached.

Impacts on Policy and Local Law Development

Council staff will need to consider human rights when developing and reviewing policies, strategies, guidelines and local laws.

Ensuring Compliance with the Human Rights Charter

Step 1 – Undertake an ‘Assessment of Compatibility’

When developing or reviewing policies, making local laws or making decisions that impact on service delivery, staff are required to undertake an assessment to ensure that the policy, local law or service being reviewed or developed is compatible with the Human Rights Charter. Completing the Assessment of Compatibility template (refer [Appendix B](#)) will ensure that proper consideration has been given to the Human Rights Charter. The completed template should then also be appended to the document.

If the assessment concludes that a right is not reasonable, then the document must be changed to ensure compliance with Charter requirements. It is important to seek feedback from key stakeholders to ensure your understanding is in-line with their needs and that of the Charter limitations. Once the assessment is complete, you can be confident the intent of the Charter has been followed.

A completed example of an Assessment of Compatibility template is included as [Appendix C](#).

Step 2 – Make a Statement of Compatibility

Once an Assessment of Compatibility has been conducted, a Statement of Compatibility needs to be included in the relevant policy, local law or service development/review document. This will provide approvers with the confidence that the Charter has been considered when developing or reviewing the document. In addition, documenting the Charter assessment will assist with any future complaints, audits or reviews.

The following wording should be used if the assessment concludes that rights are reasonably limited:

“The **(name of document)** has been reviewed against the Victorian Charter of Human Rights and Responsibilities. Amendments **(have/have not)** been made to ensure compatibility. The following rights are reasonably limited: **(list rights)**.”

If no rights are limited the following wording should be used:

“The **(name of document)** has been reviewed against the Victorian Charter of Human Rights and Responsibilities and found to be compatible. The subject matter does not raise any human rights issues.”

Example Statement of Compatibility for Councils Uniform Policy

The Council Uniform Policy has been reviewed against the Victorian Charter of Human Rights and Responsibilities. Amendments have been made to ensure compatibility. The following rights are reasonably limited: Freedom of expression, Recognition and equality before the law.

Step 3 – Make a Statement of Compatibility in a Council Report (only required for external policies, service development/reviews or local laws)

If the relevant policy, service development/review or local law will be tabled before Council, a Statement of Compatibility must be included in the Council report. The Statement of Compatibility in a Council Report will provide Councillors with the confidence that an assessment against the Charter has been undertaken enabling them to make an informed decision. The following wording should be used:

"In developing this report to Council, the subject matter has been considered to determine if it raises any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in this report. It is considered that the subject matter does not raise any human rights issues."

Breaching the Charter

Although the Charter alone does not create a case to legal action for breaches, it does allow a person to raise a human rights argument in a court or tribunal under another piece of legislation, often making a stronger case. There is also no award of damages under the Charter, but award of damages can occur under other legislation.

All staff and Councillors need to be aware that they could face a misconduct review, and/or the Council being reviewed by the Ombudsman. In the case of a misconduct review, Code's of Conduct and the processes detailed in these will apply.

Where Council is reviewed by the Ombudsman, the review result may taint the Councils reputation, and the effects from this could be quite long term for the council and the wider community.

Reporting on adherence to Human Rights

On a regular basis, training and surveys will be conducted to ensure understanding and adherence to the Charter. In addition, mini audits on policies and council reports will be conducted to ensure the use of these guidelines.

YOUR RIGHTS EXPLAINED

The Charter protects the group of rights referred to as civil and political rights. These can be grouped under four key principles of Freedom, Respect, Equality and Dignity, and are explained in more detail below.

FREEDOM

Freedom of movement, expression, assembly and association

People who are in Victoria lawfully have the right to enter and leave the State, to move around freely within it and to freely choose where they live.

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 whether orally, in writing, in print, as an artistic expression or in any other way of their choosing.

People have the right to assemble and meet peacefully, to freely associate with others and to form and join trade unions.

Right to liberty and security

Everyone has the right to freedom (liberty) and security. This means a person must not be arrested or detained arbitrarily. A person must not be deprived of his or her freedom, except when it is lawful and according to procedures established by law. For example, when someone has been arrested and charged with a crime.

If a person is arrested or detained, he or she must be told the reason at the time of their arrest or detention and promptly told about charges to be laid. A person must be quickly brought before a court and tried without unreasonable delay. Otherwise, that person must be released.

A person who is awaiting trial must not be automatically kept in custody. They may be released with conditions, guaranteeing they appear in court (for example, bail).

Any person who is deprived of their freedom by arrest or detention has the right to apply to a court for a declaration on whether the detention is lawful. The court must make a decision on this application without delay and order the release of the person if it finds that the detention is against the law.

Children in the criminal process

A child charged with committing a crime who is being detained or a child who has been detained without charge must be held separately from all detained adults; brought to trial as quickly as possible; and treated in a way that is appropriate for his or her age.

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. A court or tribunal can exclude the media and the public from a hearing if a law other than the Charter allows it to do so. All judgments or decisions made by a court or tribunal must be made public unless doing so would not be in the best interests of a child, or a law other than the Charter allows it to be kept secret.

Rights in criminal proceedings

A person who is charged with a crime has the right to be presumed innocent until proved guilty according to the law.

A person charged with a crime is entitled without discrimination to a number of minimum guarantees, such as:

- to be promptly informed about the detail and reason for the charge
- access to legal representation (a lawyer)
- the help of an interpreter
- enough time and facilities to prepare a defence and communicate with a lawyer or advisor
- to be tried without unreasonable delay
- to be present at the trial
- to choose to access legal representation or have legal aid, if eligible. There is no right to legal aid beyond the eligibility set out in the Legal Aid Act 1978 (Vic).
- to examine prosecution witnesses, and to call witnesses on his or her behalf
- the right not to testify against oneself and the right not to be compelled to confess guilt.

These guarantees are set out to ensure that the person charged fully understands the process taking place and has the opportunity to answer the charges brought against them.

A child who is charged with a crime has the right to a process that takes into account their age and the desirability of promoting their rehabilitation.

Any person convicted of a crime has the right to have the conviction and sentence reviewed by a higher court in accordance with law.

Right not to be tried or punished more than once

A person cannot be tried or punished for the same offence twice if he or she has already been convicted or acquitted of that offence in a court.

Retrospective criminal laws

A person must not be found guilty of a crime if the behaviour was not against the law at the time they engaged in it. If a penalty is imposed for a crime, it must not be greater than the penalty that applied at the time the offence was committed. If a penalty for an offence is reduced after a person committed the offence, that person must be eligible for the reduced penalty. These points do not apply to offences under international law.

Freedom of thought, conscience, religion and belief

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. For example, banning the wearing of religious symbols could be a breach of freedom of religion.

Property rights

A person must not be deprived of his or her property except in accordance with law. For example, if there has been a breach of a mortgage contract, it may be lawful to deprive a person of their property as long as proper processes are followed.

Freedom from forced work

A person must not be held in slavery or servitude, or forced to work, except as part of normal civil obligations (such as jury duty), or as part of a court order, or during emergency situations. For example, forced work does not include court ordered community service.

RESPECT

Right to life

Every person has the right to life and the right not to be arbitrarily deprived of life.

Protection of families and children

Families are entitled to be protected by society and the State. Public authorities should keep this in mind when carrying out their duties. Children have the right to protection according to their best interests, without discrimination.

Cultural rights, including recognition that human rights have a special importance for the Aboriginal people of Victoria

People of all cultural, religious, racial or linguistic backgrounds have the right to enjoy their culture, declare and practise their religion and use their languages.

Aboriginal people have the right to enjoy their identity and culture. They have the right to maintain their language, kinship ties and their distinctive essential relationship with the land, waters and other resources to which they have a connection under traditional laws and customs.

EQUITY

Equal recognition before the law

Every person has the right to equal recognition and protection before the law. Everyone is entitled to equal and effective protection against discrimination, and to enjoy human rights without discrimination. This applies regardless of a person's age, gender, race, disability, religion, marital status and a range of other personal characteristics.

Some groups or individuals, such as people with a disability or members of minority groups may be disadvantaged by discrimination they experience. Measures taken to help people who are disadvantaged by discrimination will not be considered unlawful under the Charter. For example, government funded programs may be directed to particular disadvantaged groups.

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, inhuman or degrading treatment, medical or scientific experimentation or treatment without consent

A person must not be tortured, treated or punished in a cruel, inhuman 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 has a right to privacy. This means that someone's personal privacy, family, home or correspondence can not be unlawfully or arbitrarily interfered with. The Charter also prohibits unlawful attacks on a person's reputation.

Humane treatment when deprived of liberty

All people deprived of their freedom (liberty) must be treated with humanity and respect for their dignity.

An accused person or someone who is detained without charge must be held separately from people who have been convicted of offences, except where reasonably necessary. They must be treated in a way that is appropriate for someone who has not been convicted.

HUMAN RIGHTS CHARTER – ASSESSMENT OF COMPATIBILITY

APPENDIX B

In accordance with section 28 of the Charter of Human Rights and Responsibilities, this statement of compatibility is made with respect to *(insert name of local law or council policy)*.

The *(insert name of local law or council policy)* is compatible with the human rights protected by the Charter.

Objectives

(insert objectives of local law or council policy)

Human Rights Assessment

What human rights are impacted? List each right - refer to Appendix A – Your Rights Explained for a detailed explanation of rights.	Will any person feel their rights are limited and why? Refer to 'Limiting Rights' on page 2 of the Human Rights Guidelines for advice.	What are the interests you have to balance? List any other interests of the community that need to be considered.	Is the limitation reasonable? Against each right limited, state why the limitation is reasonable.	What practical solutions are available to reduce the limitation? If a limited right is not reasonable, ensure comment made that the document was amended so the right is either not limited or reasonably limited.
1				
2				
3				
4				
5				

HUMAN RIGHTS CHARTER – ASSESSMENT OF COMPATIBILITY (EXAMPLE)

In accordance with section 28 of the Charter of Human Rights and Responsibilities, this statement of compatibility is made with respect to **Council Uniform Policy**.

The **Council Uniform Policy** is compatible with the human rights protected by the Charter.

Objectives

- Define Council's Corporate Uniform requirements.
- Set out Council's standards on appropriate personal appearance standards, including a dress code, for staff members at all levels of the organisation.

Human Rights Assessment

What human rights are impacted? List each right - refer to Appendix A – Your Rights Explained for a detailed explanation of rights.	Will any person feel their rights are limited and why? Refer to 'Limiting Rights' on page 2 of the Human Rights Guidelines for advice.	What are the interests you have to balance? List any other interests of the community that need to be considered.	Is the limitation reasonable? Against each right limited, state why the limitation is reasonable.	What practical solutions are available to reduce the limitation? If a limited right is not reasonable, ensure comment made that the document was amended so the right is either not limited or reasonably limited.
1 Freedom of thought, conscience, religion and belief	Yes - Clothing may not be suitable for staff of different religious beliefs.	Nil.	Limitation not reasonable.	Allow staff to wear items (such as muslim headwear) with their uniform. Policy amended to ensure right is not limited.
2 Freedom of expression	No - By wearing a uniform, staff not able to express themselves as an individual.	The need to allow our community to easily identify staff for assistance.	Limitation reasonable.	-
3 Recognition and equality before the law	No - Allowances are different for different categories of staff. Access to certain items of clothing are also limited.	The need for some staff to wear the uniform daily, verses those who work casually, or not required to wear it each day. Items of clothing being limited in access to staff balanced by the need for staff in certain roles requiring different clothing for their jobs and providing allowance to purchase.	Limitation reasonable.	-