



# The Charter of Human Rights and Responsibilities

## > The Charter and public authorities

The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) requires public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights in the Charter.

### What special obligations do public authorities have under the Charter?

Under section 38 of the Charter, it is unlawful for a public authority to act in a way that is incompatible with human rights, or to fail to give proper consideration to relevant human rights when making decisions.

There are two parts to this obligation. Firstly, if public authorities act (or fail to act), in a way that is incompatible with human rights, their conduct will be unlawful. Secondly, the Charter imposes a procedural obligation in the way public authorities go about decision-making – they must take relevant human rights into account. This is similar to other obligations public bodies have under administrative law to take relevant factors into account.

Section 38 of the Charter also says that the Charter does not apply if another law requires the public authority to act in that way. So the Charter does not override the other legal obligations public authorities have.

### What is a public authority?

Section 4 of the Charter lists the following as public authorities:

- a public official within the meaning of the *Public Administration Act 2004* (Vic)
- a body established by a statutory provision that has functions of a public nature
- 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
- Victoria Police
- local councils, councilors and council staff as defined by the *Local Government Act 1989* (Vic)
- Ministers
- Parliamentary Committee members when the Committee is acting in an administrative capacity, and
- any entity declared by government regulations to be a public authority.

### Statutory public authorities

As noted above, the Charter applies to all Victorian bodies established by legislation that have functions of a public nature. These are known as ‘statutory public authorities’. The Victorian Equal Opportunity and Human Rights Commission is an example of a statutory public authority. The Commission is established by the *Equal Opportunity Act 2010* (Vic) and undertakes work of a public nature.

### Did you know?

Victorian courts and tribunals sometimes have Charter obligations? In the case of *Kracke v Mental Health Review Board* [2009] VCAT 646, for example, the Victorian Civil and Administrative Tribunal found that it acts in an administrative capacity when reviewing administrative decisions and was therefore bound by public authority obligations when undertaking this function.

## Functional public authorities

The Charter also applies to a body with functions of a public nature when it is exercising those functions on behalf of the State. This is known as a 'functional public authority'.

An example of this is a private company running a prison in Victoria where the company also has a number of other business activities, including providing security at a shopping mall. The company is a public authority and has obligations under the Charter when it is undertaking work to run the prison. It is not a public authority when providing security for the shopping mall, which is a private activity.

In the case of *Homeground Services v Mohamed (Residential Tenancies)* [2009] VCAT 1131, the Victorian Civil and Administrative Tribunal found that a private welfare agency contracted by the Director of Housing to provide transitional housing to people at risk of homelessness was a public authority under the Charter.

In *Sabet v Medical Practitioners Board* [2008] VSC 346, the Victorian Supreme Court found that the Medical Practitioners Board was a functional public authority, as the Board was established by statute, publicly funded, and its functions of regulating and supervising medical practitioners was inherently public.

In contrast, a non-government school might be exercising functions of a public nature in educating students, but it is not doing so on behalf of the State - so it is not a public authority for the purposes of the Charter.

### Did you know?

The Charter applies to businesses and community organisations when they are carrying out public functions. For example, this happens when the government pays them to provide a service such as a health service or a prison.

## What functions are of a 'public nature'?

Section 4 of the Charter sets out the following factors as indicators of when functions will be of 'a public nature':

- the function is conferred by statute
- the function is connected to or generally identified with government
- the function is of a regulatory nature
- the entity is publicly funded to perform the function, and
- the entity is a company wholly owned by government.

## Is anyone excluded?

Section 4 of the Charter excludes certain bodies from being a public authority under the Charter, specifically:

- Parliament (including any person exercising functions in connection with proceedings in Parliament)
- courts and tribunals – except in their administrative capacities, and
- entities declared by regulations made under section 46 of the Charter not to be a public authority. For example, the Adult Parole Board, Youth Parole Board and Youth Residential Board are not public authorities for the purposes of the Charter because they have been declared to be excluded under Regulations.



**Victorian Equal Opportunity  
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### Need more information?

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Were these resources useful? Easy to use? Would you like to see something else included? Please email us at [information@veohrc.vic.gov.au](mailto:information@veohrc.vic.gov.au).

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