



The Charter of Human Rights and Responsibilities

> What is it all about?

The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) is fundamentally about the relationship between the Victorian Government (state and local) and the Victorian public. It requires all public authorities in Victoria to think about human rights when they make decisions about people.

In 2006, the Victorian Parliament introduced the Charter. In passing the Charter as law, Parliament reaffirmed its commitment to promoting awareness and understanding of human rights in Victoria. A human rights culture ensures the rights of all people are protected and promoted through policy, legislation and service delivery.

The Charter protects 20 human rights in Victoria in three main ways:

1. Public authorities must act in ways that are compatible with human rights

Public authorities are organisations that provide a service of a public nature, like a public school, hospital or public housing. Public authorities, including Victorian State and local governments, must consider human rights when they develop policies and make decisions that affect the community. This means that the public can raise human rights issues with any government department or agency. These can be organisations like Victoria Police or VicRoads, a State Government department, such as the Department of Human Services or a local council.

2. Human rights must be taken into account when developing new laws

When introducing new laws into Victoria's Parliament, a statement of compatibility that indicates how the proposed law meets the standards set out in the Charter must be tabled in Parliament. This helps Parliament consider the human rights impact of the laws it passes.

3. Courts must interpret and apply all laws compatibly with human rights

All Victorian laws must be interpreted in a way that upholds the human rights outlined in the Charter, as far as this is possible. Parliament has the final say in deciding what laws are in the best interests of the Victorian community.

Did you know?

Human rights laws exist at the federal level to guide the work of the Australian Government and at the state level to guide the work of the Victorian Government. This is just like any other laws that govern the activities of public authorities. For example there is both federal and state legislation covering privacy obligations, freedom of information, financial management, record-keeping, and codes of conduct for public servants. The Charter, like these laws, is about good public sector management and accountability.

Which rights are protected?

Human rights are the basic entitlements that belong to every one of us, regardless of our background, where we live, what we look like, what we think or what we believe.

Some human rights have been protected in Victorian law for a long time. Criminal procedure laws that set out the right to a fair trial are an example of this. However, other basic rights that many Victorians take for granted – such as the rights to freedom of expression and freedom of association – were not clearly protected.

The Charter addresses these gaps and sets out our fundamental rights clearly and simply in one place. This makes them accessible for all Victorians. The Charter protects the following 20 rights.

Your right to recognition and equality before the law (section 8)

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

For example, a government 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 accept other forms of identification.

Your right to life (section 9)

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 a person in prison or foster care, then they must take positive steps to ensure that the person is in a safe environment.

Your right to protection from torture and cruel, inhuman or degrading treatment (section 10)

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 established procedures to make sure that patients scheduled for treatment understand what is involved and have agreed to the treatment.

Your right to freedom from forced work (section 11)

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 don't perform the work. This does not include work done in detention because of a work court order, work done in the community because of a community order or a civic obligation such as jury service.

Your right to freedom of movement (section 12)

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

For example, a parole order which required a man to stay in Victoria while on parole was found to be a reasonable limitation on his freedom of movement.

Your right to privacy and reputation (section 13)

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

For example, VicRoads takes steps to protect the personal information it has about you. It can only give that information to people who lawfully require it.

Your right to freedom of thought, conscience, religion and belief (section 14)

People have the freedom to think and believe what they want, for example, 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.

Your right to freedom of expression (section 15)

People are free to say what they think and want to say. They have the right to find, receive and share information and ideas. In general, this right might be limited to respect the rights and reputation of other people, or for the protection of public safety and order.

For example, people can generally hand out information about their local political campaign in a public space.

Did you know?

The Charter also applies to the actions of private bodies such as businesses and charities when they are doing things on behalf of the government – such as when the government pays them to run a prison or provide health services to the community.

Your right to peaceful assembly and freedom of association (section 16)

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

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 to ensure other people's rights are also respected.

Your right to protection of families and children (section 17)

Families are entitled to protection. Children have the same rights as adults with added protection according to their best interests.

For example, a government agency considers the protection of the family and the best interests of the child in deciding to provide extra support services to parents with disabilities to help them look after their children.

Your right to taking part in public life (section 18)

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 assist them to vote privately in Victorian state elections.

Cultural rights (section 19)

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

For example, Parks Victoria has permission from the Victorian Civil and Administrative Tribunal to employ local Aboriginal people in their field office to care for and protect Wurundjeri country. The Tribunal's decision recognises the right of Aboriginal people to maintain their distinctive spiritual, material and economic relationship with the land.

Property rights (section 20)

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 it is illegal (i.e. drugs), was purchased from the proceeds of a crime, or stolen.

Your right to liberty and security of person (section 21)

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.

For example, government policy says that any disability service wishing to severely restrain a patient must first apply to the senior practitioner to ensure there are proper protections in place when someone is deprived of their liberty.

Your right to humane treatment when deprived of liberty (section 22)

People have the right to be treated with humanity if they are accused of breaking the law and are detained.

For example, people accused of a crime must be treated humanely and must not be detained with people who have already been convicted of a crime.

Rights of children in the criminal process (section 23)

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. Children are entitled to opportunities for education and rehabilitation in detention.

For example, children are able to complete their high school education while in the juvenile justice system. It is the responsibility of the government to ensure this opportunity is provided.

Your right to a fair hearing (section 24)

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, you have the right to take your matter to court; you have the right to advice and representation, such as Legal Aid if you are eligible; your hearing should go ahead without too much delay; and all relevant evidence should be disclosed. Sometimes, the right can extend to an obligation on a decision-maker to give you reasons for their decisions.

Rights in criminal proceedings (section 25)

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

Did you know?

The Charter is based on the International Covenant on Civil and Political Rights, which was introduced in 1966. Australia is one of 167 countries to agree to be legally bound by the Covenant.

Right not to be tried or punished more than once (section 26)

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 gaol, and that is the end of the matter. The prosecutors can't try to convict them again for the same crime.

Retrospective criminal laws (section 27)

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, in 2011 Parliament introduced new serious bullying offences in Victoria (known as Brodie's law). These laws only apply from that time forward. They do not apply to actions people took prior to 2011.

Benefits of the Charter

The common language of human rights has made it possible for Victorians to navigate the complex patchwork of laws and service standards. It has been a catalyst for transparency and accountability in government by giving everyday Victorians the tools to question and challenge laws, policies and decisions made by public authorities that have the potential to impact their human rights.

People are achieving real outcomes outside the courts because they are raising their human rights concerns with public authorities through one-off discussions to rectify a particular case, or through more robust negotiations to rectify serious systemic issues.

The Charter in operation

Much of the Charter's work is done when government is developing laws and interacting with the community.

The Charter addresses basic rights that are everyday concerns but that we may not have thought of as involving human rights. The Charter can help you hold a public authority accountable by placing human rights at the forefront of their decision making and actions.

For example:

- *your local hospital needs to consider the right to privacy when it deals with your personal information.*
- *the residential-care home where your grandfather lives has to think about people's right to be treated humanely when it's looking after him.*
- *your local council needs to think about people's rights to participate and have a reasonable opportunity to have their say when setting rules about council procedures.*
- *your children's school needs to think about the rights to equality, culture and religious freedom to ensure that children from different backgrounds have a fair go at an education in an environment where they can thrive.*

Where can I get help?

If you want to find out more about your human rights, you can contact the Commission.

If you have concerns about how a public authority has treated you, you can talk to them about it, and in many circumstances you can make a complaint to Ombudsman Victoria who can look at the issue from an independent perspective (03) 9613 6222.



**Victorian Equal Opportunity
& Human Rights Commission**

Need more information?

Contact the Commission:

Enquiry Line 1300 292 153 or (03) 9032 3583
Fax 1300 891 858
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We welcome your feedback!

Were these resources useful? Easy to use? Would you like to see something else included? Please email us at communications@veohrc.vic.gov.au.

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