



The Charter of Human Rights and Responsibilities

> The Charter and Parliament

The Victorian *Charter of Human Rights and Responsibilities Act 2006* (the Charter) is an Act of Parliament. The Charter does not override other laws, so the supremacy of Parliament to make decisions is maintained.

When Parliament enacted the Charter in 2008 it meant all new laws had to be scrutinised for compatibility with human rights under the Charter. This means that human rights must be an active consideration when government is developing laws and when Parliament is making decisions about what will become law in Victoria.

Members of Parliament introducing Bills are required to table a statement of compatibility explaining the impact of the legislation on the human rights of Victorians. A Parliamentary Committee, the Scrutiny of Acts and Regulations Committee (SARC) then reviews all Bills and reports to Parliament on their assessment of the human rights issues involved and whether a Bill unduly trespasses on rights and freedoms. Organisations and the general public can make their own submissions on the Bill to SARC when they are in this process of consideration.

These processes:

- ensure that Parliament has considered whether a Bill is compatible with human rights and if any proposed limitations on rights are reasonable and proportionate,
- help Parliament hold the government accountable for its consideration of human rights during the development of new laws,
- provide clarity by sending a message to the community and the courts about Parliament's intention in relation to human rights and any limitations of human rights, and
- enhance the transparency of the work of government and Parliament by putting human rights considerations on the public record (through Hansard).

Statements of Compatibility

The Charter requires a statement of compatibility with every Bill introduced into Parliament before the Member introducing the Bill gives his or her second reading speech.

A statement of compatibility must set out what rights are engaged by the proposed legislation and whether the Bill is compatible with the Charter and if any part of the Bill that is incompatible.

Having this requirement makes government:

- look at human rights when it is developing new laws; and
- explain to Parliament and the community when it wants to limit people's human rights and why.

Did you know?

Promoting and protecting the right to equality set out in the Charter is one of the key objectives of the *Equal Opportunity Act 2010*. The Act also places a 'positive duty' on organisations to take proactive steps to eliminate discrimination, sexual harassment and victimisation before incidents occur, which is similar to the Charter obligation on public authorities to act compatibly with human rights.

Parliamentary Scrutiny

The provision in the Charter for SARC to scrutinise legislation provides a balanced and transparent mechanism for assessing the human rights impacts of proposed laws and informing parliamentary debate. When it operates well, the parliamentary scrutiny process can bring greater clarity to the policy goals that underly the legislation. This can improve the law-making process by ensuring that discussion is focused on how best to achieve the government's policy goals while also ensuring that, if human rights are limited, the least rights restrictive approach is adopted. This also helps to flag the human rights issues public authorities may face when implementing the laws. For example, debate in recent years on amendments to the Control of Weapons Act 1990 has helped Victoria Police mitigate risks of human rights violations when enforcing these laws.

In 2012, the Australian Parliament established the Parliamentary Joint Committee on Human Rights to look at human rights issues raised by federal laws. This operates in a similar way to SARC.

Parliamentary debate

A large number of Bills have triggered parliamentary debate or comment on human rights issues. In 2010, for example, Hansard recorded debate on human rights issues for 42 Bills presented to the Victorian Parliament.

In 2009, Parliament changed a number of laws to ensure they are consistent with the human rights set out in the Charter. These include:

- the *Education and Training Reform Act 2006* was amended to remove an element of age discrimination,

- an offence dealing with the disclosure of confidential information in the *Victorian Urban Development Authority Act 2003* was amended to make it consistent with the freedom of expression, and
- the *Marine Act 1988* was amended to require disclosure of information about vessels to be only for the purposes of monitoring or bringing proceedings for an offence, in line with the right to privacy.

What happens when Parliament wants to limit rights?

In 2010, the Government tabled a statement noting the incompatibility of the Control of Weapons Amendment Bill with the Charter. The Department of Justice observed that the Charter helped frame discussions within government in the development of the Bill and required that the Government publicly explain its reasons for departing from rights in this context. This increased government transparency and accountability.



**Victorian Equal Opportunity
& Human Rights Commission**

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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 communication@veohrc.vic.gov.au.

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