



# The Charter of Human Rights and Responsibilities

## > The Charter and interventions in court cases

Victorian courts and the Victorian Civil and Administrative Tribunal have important roles to play when it comes to interpreting the Charter and applying it to the facts of particular cases. The Charter gives the Attorney-General and the Victorian Equal Opportunity and Human Rights Commission a statutory right to intervene in legal proceedings where a question of law arises about the application of the Charter or the interpretation of another law in light of the Charter.

### What does it mean to intervene in a court case?

When the Attorney-General or the Commission intervene, they become parties to the case, but they do not represent or act as an advocate for either side in a case. They are there to put forward views on the Charter and how it should be interpreted and applied. The Attorney-General comes to this role as the first law officer in Victoria with general responsibility for Victorian laws, the legal system and the Victorian Government's role within that system. The Attorney-General is also the Government Minister responsible for the Charter. The Commission is the regulatory body for human rights and equal opportunity in Victoria. It is an advocate for the law and has statutory functions under the Charter for promoting the Charter and human rights.

### How does the intervention function work?

The Attorney-General and the Commission are formally notified when the Charter is raised in cases before the Supreme Court and the County Court (section 35). But we also find out about cases in courts and tribunals through the parties, the judge, court reporting, community groups, and the media.

### How has the Commission used its intervention function?

The Commission's interventions generally focus on questions of law, policy and issues of broader public interest rather than detailed arguments about the facts of a particular case. Interventions have varied in subject-matter from criminal procedure and fair trial rights, to the best interests of the child in adoption proceedings, and the duties of VCAT when making decisions about guardianship.

#### Did you know?

The Commission has guidelines setting out what it will take into account when deciding whether or not to intervene in a case. These are available at [humanrightscommission.vic.gov.au/charterinterventions](http://humanrightscommission.vic.gov.au/charterinterventions)

Instances where the Commission has put a submission in a Charter case are also available online at [humanrightscommission/vic.gov.au/chartercases](http://humanrightscommission/vic.gov.au/chartercases)

#### Did you know?

A number of statutory authorities have an intervention role. For example, the Australian Human Rights Commission, the Australian Competition and Consumer Commission, and the Australian Securities and Investments Commission have this role in their own areas of expertise.

## Example of an intervention: Taking a man's intellectual disability into account in court

In *Taha v Broadmeadows Magistrates Court* [2011] VSC 162, the Commission intervened in Mr Taha's case which was before the Supreme Court.

Mr Taha is a young man with an intellectual disability who had received a large number of fines, which he did not pay. The fines were mainly imposed for travelling on public transport without a valid ticket and refusing to give his name and address to ticket inspectors. He also incurred fines for driving an unlicensed vehicle and for failing to wear a helmet while riding.

Prosecutors sought to enforce these fines and Mr Taha was brought before the Magistrates Court in 2009. The Court ordered that Mr Taha be imprisoned for 100 days unless he paid his fines, which came to a total of \$11,250.20.

When a Magistrate is making this kind of order, the Infringements Act 2006 allows the Magistrate to consider a range of special circumstances that may put people in a position where they receive more fines and may be unable to pay them. These considerations are things like whether the person is living with a mental illness, whether they experience

homelessness, or as in Mr Taha's case, whether a person has an intellectual disability. This gives the Magistrate a way of considering whether options other than imprisonment are more appropriate for the person concerned. This is particularly important in the infringements area where imprisonment can be an automatic consequence for failure to pay fines. Unlike a criminal offence, infringements law does not allow for a case to be appealed or re-heard.

Although the criminal justice system had records of Mr Taha's disability, the Magistrate hearing his case was not made aware of his disability and so did not take these special circumstances into account.

The Commission intervened in this case to make submissions that applying the Charter (and taking into account the rights to equality, liberty and a fair hearing), magistrates have a duty to consider whether there are any relevant circumstances that would allow them to deal differently with matters like this under the Infringements Act.

The Supreme Court agreed with this and sent the matter back to the Magistrates Court to consider the case again based on all the information. The Office of Public Prosecutions has appealed this decision.

### Did you know?

The Commission doesn't intervene in every case about the Charter. In 2011, the Commission was notified of 35 cases and intervened in 7. In 2010 the Commission was notified of 59 cases and intervened in 14. In 2009 the Commission was notified of 52 cases and intervened in 7. In 2008 the Commission was notified of 35 cases and intervened in 5.

### Did you know?

Since the introduction of the Charter in 2008 it has been raised briefly but not relied on in 103 cases and substantively in 106 cases in court. This is a tiny proportion of the hundreds of thousands of cases that were before the Victorian courts in the same period. Much of the important work relating to the Charter was implemented at a service delivery level.



**Victorian Equal Opportunity  
& Human Rights Commission**

### Need more information?

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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 [information@veohrc.vic.gov.au](mailto:information@veohrc.vic.gov.au).

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