

Charter of Human Rights and Responsibilities Act 2006 Implications for Corrections Victoria

Eliza Poulton
Senior Legal Policy Officer
Corrections Victoria

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Overview

- General principles
- Rights – concept of reasonable limitations
- Key operational aspects – impacts on CV
- Key rights for women in prison

General Principles

- Over 2,000 submissions received during consultation, including from prisoners and prisoner advocacy groups
- Modelled on *International Covenant on Civil and Political Rights*
- ‘Human rights come with responsibilities and must be exercised in a way that respects the human rights of others’ (Preamble to Charter).



Rights

- Often subject to challenge:
 - Protection from torture and cruel, inhuman or degrading treatment or punishment (s10);
 - Privacy and reputation (s13);
 - Freedom of thought, conscience, religion and belief (s14);
 - Right to protection of families and children (s17);
 - Right to humane treatment when deprived of liberty (s22);
 - Right to liberty and security of person (s21).



Rights

Lord Bingham of Cornhill in *R (Daly) v Home Secretary* [2001] UKHL 26 (at 5):

‘Any custodial order inevitably curtails the enjoyment, by the person confined, of rights enjoyed by other citizens. He cannot move freely and choose his associates as they are entitled to do. It is indeed an important objective of such an order to curtail such rights, whether to punish him or to protect other members of the public or both...’



Rights



‘... But the order does not wholly deprive the person confined of all rights enjoyed by other citizens. Some rights, perhaps in an attenuated or qualified form, survive the making of the order. And it may well be that the importance of such surviving rights is enhanced by the loss of partial loss of other rights.’

Rights

DEPARTMENT
OF JUSTICE



s7(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

- (a) the nature of the right; and*
- (b) the importance of the purpose of the limitation; and*
- (c) the nature and extent of the limitation; and*
- (d) the relationship between the limitation and its purpose; and*
- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.*

Key operational aspects – impacts on CV



Development of legislation

- Section 28 – Statements of compatibility
- Section 12A of *Subordinate Legislation Act 1994* – Human rights certificate (for regulations)
- Section 31 – Override by Parliament (in exceptional circumstances)

Key operational aspects – impacts on CV



Interpretation of statutory provisions

- Section 32(1)
So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.
- Section 32(2)
International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human rights may be considered in interpreting a statutory provision.

Key operational aspects – impacts on CV



- Section 36 - **Declarations of inconsistent interpretation** where the statutory provision cannot be interpreted consistently with a human right.
- Section 37 – **Action on declaration of inconsistent interpretation** (debate in Parliament).

Key operational aspects – impacts on CV



Obligation on public authorities

Section 38(1) – Conduct of public authorities

... 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.

Suggests both a substantive and procedural requirement.

Key operational aspects – impacts on CV



Legal proceedings

- Section 39(1):

If, otherwise than because of this Charter, a person may seek any relief or remedy in respect of an act or decision of a public authority on the ground that the act or decision was unlawful, that person may seek that relief or remedy on a ground of unlawfulness arising because of this Charter.

Key rights for women in prison



Right to family life

- Section 17 – Protection of families and children

(1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.

(2) Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

Key rights for women in prison



Right to family life

- Section 13 – Privacy and reputation

A person has the right-

(a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and

(b) not to have his or her reputation unlawfully attacked.

Key rights for women in prison



- Section 13 of Charter – Equivalent of Article 8 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, ‘Respect for private and family life’.
- Considered in *P & Ors v Secretary Of State For Home Department & Anor* [2001] EWCA Civ 1151.

Key rights for women in prison

P & Ors v Secretary Of State For Home Department & Anor
[2001] EWCA Civ 1151:

1. *The right to respect for family life is not a right which a prisoner necessarily loses by reason of his/her incarceration;*
2. *On the other hand, where a court considers whether the state's reasons for interfering with that right are relevant and sufficient, it is entitled to take into account:*
 - a) *The reasonable requirements of prison organisation and security; and*
 - b) *The desirability of maintaining a uniform regime in prison which avoids any appearance of arbitrariness or discrimination;*



Conclusion

Charter of Human Rights and Responsibilities Act 2006:

- May lead to greater intensity of judicial review;
- Will provide yet another safeguard on correctional practice;
- Ensures that the language and culture of human rights is part of CV's 'best practice';
- Positive flow-on effect for community generally.

