

THINK CHARTER

The Victorian Charter of Human Rights and Responsibilities

The *Victorian Charter of Human Rights and Responsibilities* is a law that protects the human rights of all people in Victoria. As an employee of the public sector, the *Charter* places legal responsibilities on your decision making and obligations on your professional behaviour. This is not just a matter of compliance, but a commitment to a human rights culture within government.

The *Charter* will ensure that when current and future Victorian Governments make laws and deliver services, they do so with our civil and political rights in mind.

WHY DO WE HAVE A CHARTER AND WHAT RIGHTS ARE IN IT?

The *Charter* was implemented because some basic human rights – such as freedom of expression, freedom of religion and protection from cruel, inhuman or degrading treatment – previously had no clear legal protection.

The *Charter* complements other laws – such as equal opportunity legislation – by setting out a familiar list of 20 rights that assist all people to live with freedom, respect, equality and dignity.

FREEDOM

- Freedom from forced work
- Freedom of movement
- Freedom of thought, conscience, religion and belief
- Freedom of expression
- Right to peaceful assembly and freedom of association
- Property rights
- Right to liberty and security of person
- Fair hearing
- Rights in criminal proceedings
- Right not to be tried and punished more than once
- Protection from retrospective criminal laws

RESPECT

- Right to life
- Protection of families and children
- Cultural rights, including recognition of the distinct cultural rights of the Aboriginal people of Victoria

EQUALITY

- Recognition and equality before the law
- Entitlement to participate in public life (including voting)

DIGNITY

- Protection from torture and cruel, inhuman or degrading treatment
- Protection of privacy and reputation
- Humane treatment when deprived of liberty
- Appropriate treatment of children in the criminal process

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CHARTER RIGHTS EXPLAINED

THE CHARTER RIGHTS CAN BE GROUPED UNDER FOUR KEY PRINCIPLES OF FREEDOM, RESPECT, EQUALITY AND DIGNITY AND ARE EXPLAINED IN MORE DETAIL BELOW:

FREEDOM

S.11 FREEDOM FROM FORCED WORK

A person must not be held in slavery or servitude, or forced to work, except as part of normal civil obligations (such as jury duty), or as part of a court order, or during emergencies.

S.12 FREEDOM OF MOVEMENT

People who are in Victoria lawfully have the right to enter and leave Victoria, to move around freely within Victoria and to choose where to live.

S.14 FREEDOM OF THOUGHT, CONSCIENCE, RELIGION AND BELIEF

People have the freedom to have or choose a religion or belief, and the freedom to demonstrate their religion or belief. They can do this privately or publicly – at home, at work or in a place of worship – as part of a group or alone. A person must not be coerced into or restrained from having or adopting a religion or belief.

S.15 FREEDOM OF EXPRESSION

People have the right to hold opinions without interference. People have the right to seek out, receive and pass on information and ideas of all kinds whether orally, in writing, in print, by way of artistic expression or in any other way of their choosing.

This freedom may be restricted by law where this is necessary to respect the rights and reputation of others or for the protection of national security, public order, public health or public morality.

S.16 RIGHT TO PEACEFUL ASSEMBLY AND FREEDOM OF ASSOCIATION

People have the right to assemble and meet peacefully, to freely associate with others and to form and join trade unions.

S.20 PROPERTY RIGHTS

A person must not be deprived of his or her property except in accordance with law.

S.21 RIGHT TO LIBERTY AND SECURITY OF PERSON

Everyone has the right to liberty and security. This means a person must not be arrested or detained arbitrarily. A person must not be deprived of his or her freedom, except when it is lawful and according to procedures established by law. For example, when someone has been arrested and charged with a crime.

If a person is arrested or detained, he or she must be told the reason at the time of their arrest or detention and promptly told about charges to be laid. A person must be quickly brought before a court and tried without unreasonable delay. Otherwise, that person must be released.

A person who is awaiting trial must not be automatically kept in custody. They may be released with conditions, guaranteeing they appear in court (for example, bail).

Any person who is deprived of their freedom by arrest or detention has the right to apply to a court for a declaration on whether the detention is lawful. The court must make a decision on this application without delay and order the release of the person if it finds that the detention is against the law.

A person must not be imprisoned only because they are not able to fulfil a contractual obligation.

S.24 FAIR HEARING

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.

A court or tribunal can exclude the media and the public from a hearing if a law other than the *Charter* allows it to do so. All judgements or decisions made by a court or tribunal must be made public unless doing so would not be in the best interests of a child, or a law other than the *Charter* allows it to be kept secret.

S.25 RIGHTS IN CRIMINAL PROCEEDINGS

A person who is charged with a crime has a right to be presumed innocent until proved guilty according to the law.

A person charged with a crime is entitled, without discrimination, to a number of minimum guarantees, such as:

- to be promptly informed of the detail and reason for the charge;

- enough time and facilities to prepare a defence and communicate with a lawyer chosen by him or her;

- to be tried without unreasonable delay;

- to be present at the trial;

- to choose to access legal representation or have legal aid, if eligible, and to be told about any eligibility if unrepresented. There is no right to legal aid beyond the eligibility set out in the *Legal Aid Act 1978*;

- to examine prosecution witnesses, and to call witnesses on his or her behalf;

- to have the free assistance of an interpreter or other necessary communication tools; and

- the right not to testify against oneself and the right not to be compelled to confess guilt.

A child who is charged with a crime has the right to a process that takes into account their age and the desirability of promoting their rehabilitation.

Any person convicted of a crime has the right to have the conviction and sentence reviewed by a higher court in accordance with law.

S.26 RIGHT NOT TO BE TRIED AND PUNISHED MORE THAN ONCE

A person must not be tried or punished more than once for the same offence if he or she has already been convicted or acquitted of that offence in a court.

S. 27 PROTECTION FROM RETROSPECTIVE CRIMINAL LAWS

A person must not be found guilty of a crime if the behaviour was not against the law at the time they engaged in it. If a penalty is imposed for a crime, it must not be greater than the penalty that applied at the time the offence was committed. If a penalty for an offence is reduced after a person committed the offence, but before the person is sentenced, that person is eligible for the reduced penalty. These points do not apply to offences under international law.

RESPECT

S.9 RIGHT TO LIFE

Every person has the right to life and the right not to be arbitrarily deprived of life.

S.17 PROTECTION OF FAMILIES AND CHILDREN

Families are entitled to be protected by society and the State. Children have the right to protection in accordance with their best interests, without discrimination.

S.19 CULTURAL RIGHTS, INCLUDING RECOGNITION OF THE DISTINCT CULTURAL RIGHTS OF THE ABORIGINAL PEOPLE OF VICTORIA

People of all cultural, religious, racial or linguistic backgrounds have the right to enjoy their culture, declare and practise their religion and use their languages.

Aboriginal people have the right to enjoy their identity and culture. They have the right to maintain their language, kinship ties and their distinctive spiritual, material and economic relationship with the land, waters and other resources to which they have a connection under traditional laws and customs.

EQUALITY

S.8 RECOGNITION AND EQUALITY BEFORE THE LAW

Every person has the right to equal recognition and protection before the law. Everyone is entitled to equal and effective protection against discrimination, and to enjoy human rights without discrimination. This applies regardless of a person's age, gender, race, disability, sexual orientation, religion, marital status and a range of other personal characteristics (attributes are the same as under the *Equal Opportunity Act 1995*).

Measures taken to help people who are disadvantaged by discrimination will not be considered unlawful discrimination under the *Charter*.

S.18 ENTITLEMENT TO PARTICIPATE IN PUBLIC LIFE (INCLUDING VOTING)

Every person has the right to take part in public affairs without discrimination. Every eligible person has the right to vote, be elected and have equal access to the Victorian public service and public office.

DIGNITY

S.10 PROTECTION FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

A person must not be tortured, treated or punished in a cruel, inhuman or degrading way. A person must not be subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.

S.13 PROTECTION OF PRIVACY AND REPUTATION

A person has a right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The *Charter* also prohibits unlawful attacks on a person's reputation.

S.22 HUMANE TREATMENT WHEN DEPRIVED OF LIBERTY

All people deprived of their liberty must be treated with humanity and respect for their dignity.

An accused person, or someone who is detained without charge, must be held separately from people who have been convicted of offences, except where reasonably necessary. They must be treated in a way that is appropriate for someone who has not been convicted.

S.23 APPROPRIATE TREATMENT OF CHILDREN IN THE CRIMINAL PROCESS

A child accused of committing a crime who is being detained, or a child who has been detained without charge, must be held separately from all detained adults and brought to trial as quickly as possible. A child convicted of an offence must be treated in a way that is appropriate for his or her age.

LIMITING HUMAN RIGHTS

The *Charter* recognises that human rights may be limited in certain circumstances. Under the *Charter*, rights may be limited when justified in a free and democratic society, taking into account relevant factors including:

What are the values underlying the human right?

Is the right being limited very important in international law? (for example, the prohibition against torture)

Is the purpose for limiting the right very important?

What sort of limitation is being proposed? To what extent does it limit the right?

Is the limitation proposed likely to achieve its purpose?

Are there less restrictive means reasonably available to achieve this purpose?

This allows a balance to be struck between people's rights and a need for public authorities to protect the broader public interest.

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WHO HAS RIGHTS?

The *Charter* provides equal protection to all people in Victoria. This includes you, your family, your neighbours, your colleagues, your clients and members of the public. It does not include corporations.

HOW FAR DO RIGHTS GO?

Laws can put reasonable restrictions on rights. For example, freedom of expression may be limited in order to protect a person's reputation. However, limitations on rights are allowed only if they are clearly needed in a free and democratic society that is based on human dignity, equality and freedom.

HOW DOES THE CHARTER WORK?

The *Charter* is based on a 'dialogue model' whereby the government, courts and parliament have specific roles to ensure that human rights standards are protected and promoted.

For the government, this means building human rights considerations into policy development, new legislation and service delivery. All new Bills introduced into parliament require a statement explaining whether they are compatible or incompatible with the *Charter* rights.

The *Charter* does not allow courts to strike down laws. Instead, courts have an obligation to interpret legislation consistently with the *Charter* rights. Where this is not possible, the Supreme Court may declare that the legislation is inconsistent with the *Charter*, which requires the government and parliament to respond by reconsidering the legislation. Ultimately, parliament has the final say over what laws are in place and in exceptional circumstances can override the *Charter*.

The *Charter* also requires all 'public authorities' and their employees to act compatibly with human rights and to consider human rights when making decisions. This includes public servants, Victoria Police, local councils, and ministers, as well as non-government organisations performing public functions on behalf of government. The *Code of Conduct for Victorian Public Sector Employees* also requires the public sector to respect human rights.

The focus of the *Charter* is about prevention rather than litigation. There is no additional right to legal action for a breach of the *Charter*. However, a person may raise a human rights argument in an existing case before a court or tribunal. The Ombudsman can also investigate whether administrative action is incompatible with a human right.

WHEN DID MY RESPONSIBILITIES UNDER THE CHARTER COMMENCE?

1 JANUARY 2007

The first part of the *Charter* commenced on this day – new legislation is vetted for consistency with human rights.

1 JANUARY 2008

Public authorities must now act compatibly with human rights. New court functions in place.

OCTOBER 2011

Review of the *Charter* after four years of operation. (Another review is due after eight years of operation.)

SO WHAT DOES THIS MEAN FOR ME?

It means that:

- you must **Think Charter** and take human rights into account when you make decisions, provide advice and deliver services;
- you must be **aware of any changes** made to your guidelines, policies or the legal framework for your job to take human rights into account; and
- your decisions **may be reviewed** by the Ombudsman and the courts.

WHERE DO I GET HELP?

Training about the *Charter* is being provided across government. Your organisation may also be reviewing the legislation and policies under which you operate for consistency with human rights. The Victorian Equal Opportunity and Human Rights Commission is providing community education in relation to the *Charter*. The following resources provide helpful information:

- Department of Justice (human rights): www.justice.vic.gov.au/humanrights
- Draft Guidelines for Legislation and Policy Officers in the State of Victoria
- Victorian Equal Opportunity and Human Rights Commission: www.humanrightscormission.vic.gov.au

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