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<td>19 Cultural rights</td>
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<td>RIGHT PROVIDED BY THE HUMAN RIGHTS ACT</td>
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<tr>
<td>8 Recognition and equality before the law</td>
<td></td>
<td>No issue arises on the face of the Bill</td>
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<tr>
<td>9 Right to life</td>
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<td>No issue arises on the face of the Bill</td>
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<tr>
<td>10 Protection from torture and cruel, inhuman or degrading treatment etc</td>
<td>Sections 17(1)(f), 40, 48(1)(b), 86 and 96.</td>
<td>The provisions of the Bill are consistent with section 10(1) insofar as there is a clear direction to ensure that a detainee is not subjected to such treatment. No issue arises in relation to 10(2).</td>
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<tr>
<td>(1) No-one may be— (a) tortured; or (b) treated or punished in a cruel, inhuman or degrading way. (2) ...</td>
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<td>11 Protection of the family and children</td>
<td>Sections 11, 17(1)(h), (l), 49 and 50.</td>
<td>The provisions of the Bill are consistent with section 11(1) insofar as the Bill recognises the importance of contact with family members. It is further consistent with section 11(2) as no detention order may be made in relation to a child.</td>
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<tr>
<td>(1) The family is the natural and basic group unit of society and is entitled to be protected by society. (2) Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.</td>
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<td>12 Privacy and reputation</td>
<td>Sections 38 – 41, 49 – 61, 79 – 85 and Schedule 1 (see discussion in the memorandum)</td>
<td>The terms of the Bill are prima facie inconsistent with section 12(a) insofar as the manner in which a preventative detention may be made and executed interferes with the privacy of the person who is the subject of the order and also third parties. The question is whether the interference is ‘arbitrary’ and whether the limitation provided by section 28 applies. No issue arises in relation to s.12(b)</td>
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<td>Everyone has the right— (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and (b) not to have his or her reputation unlawfully attacked.</td>
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<tr>
<td>13 Freedom of movement</td>
<td>Sections 68 and 84 and the consequences of detention</td>
<td>There is a justifiable limit on these rights.</td>
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<tr>
<td>Everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.</td>
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<tr>
<td>RIGHT PROVIDED BY THE HUMAN RIGHTS ACT</td>
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<td>14 Freedom of thought, conscience, religion and belief</td>
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<td>No issue arises on the face of the Bill with respect to direct interference. However, the Bill does recognise that these rights should be considered in making arrangements for a person detained.</td>
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<tr>
<td>15 Peaceful assembly and freedom of association</td>
<td>Section 84 and the consequences of detention</td>
<td>There is a justifiable limit on these rights.</td>
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<td>(1) Everyone has the right of peaceful assembly.</td>
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<tr>
<td>(2) Everyone has the right to freedom of association.</td>
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<tr>
<td>16 Freedom of expression</td>
<td>Sections 49 – 58 and provisions concerned prohibited contact orders.</td>
<td>There is prima facie an interference with these rights but the rights may be limited per section 28.</td>
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<td>(1) Everyone has the right to hold opinions without interference.</td>
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<td>(2) Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.</td>
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<td>17 Taking part in public life</td>
<td>An issue would only arise if a person was the subject of a detention order at the time of an election. The Bill does not address this issue.</td>
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<td>RIGHT PROVIDED BY THE HUMAN RIGHTS ACT</td>
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<tr>
<td>18 Right to liberty and security of person</td>
<td>This is the central human right in issue.</td>
<td>No issue arises in relation to section 18(2). Because of the nature of a preventative detention order there is no ‘arrest’ or ‘charge’ however, the Bill provides for a person to be informed of the reasons for detention, so the terms comply with sections 18(3), (4), (5) and (6). There is strictly no provision for compensation with respect to rights under section 18(7). No issue arises under section 18(8).</td>
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<tr>
<td>(1) Everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained.</td>
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<td>(2) No-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.</td>
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<td>(3) Anyone who is arrested must be told, at the time of arrest, of the reasons for the arrest and must be promptly told about any charges against him or her.</td>
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<td>(4) Anyone who is arrested or detained on a criminal charge—</td>
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<tr>
<td>(a) must be promptly brought before a judge or magistrate; and</td>
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<tr>
<td>(b) has the right to be tried within a reasonable time or released.</td>
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<td>(5) Anyone who is awaiting trial must not be detained in custody as a general rule, but his or her release may be subject to guarantees to appear for trial, at any other stage of the judicial proceeding, and, if appropriate, for execution of judgment.</td>
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<td>(6) Anyone who is deprived of liberty by arrest or detention is entitled to apply to a court so that the court can decide, without delay, the lawfulness of the detention and order the person’s release if the detention is not lawful.</td>
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<td>(7) Anyone who has been unlawfully arrested or detained has the right to compensation for the arrest or detention.</td>
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<td>(8) No-one may be imprisoned only because of the inability to carry out a contractual obligation.</td>
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<td>RIGHT PROVIDED BY THE HUMAN RIGHTS ACT</td>
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<tr>
<td><strong>19 Humane treatment when deprived of liberty</strong></td>
<td>(1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.</td>
<td>Sections 43 and 48</td>
<td>The Bill is compatible.</td>
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<td>(2) An accused person must be segregated from convicted people, except in exceptional circumstances.</td>
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<td>(3) An accused person must be treated in a way that is appropriate for a person who has not been convicted.</td>
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<tr>
<td><strong>20 Children in the criminal process</strong></td>
<td></td>
<td>No issue arises on the face of the Bill</td>
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<tr>
<td><strong>21 Fair trial</strong></td>
<td>(1) Everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.</td>
<td>Section 13 and the powers of the Supreme Court generally in the Bill. See also more detailed discussion in the advice.</td>
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<td>(2) However, the press and public may be excluded from all or part of a trial—</td>
<td></td>
<td>The Bill is compatible.</td>
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<td>(a) to protect morals, public order or national security in a democratic society; or</td>
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<td>(b) if the interest of the private lives of the parties require the exclusion; or</td>
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<td>(c) if, and to the extent that, the exclusion is strictly necessary, in special circumstances of the case, because publicity would otherwise prejudice the interests of justice.</td>
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<td>(3) But each judgment in a criminal or civil proceeding must be made public unless the interest of a child requires that the judgment not be made public.</td>
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### Right Provided by the Human Rights Act

<table>
<thead>
<tr>
<th>Right in Criminal Proceedings</th>
<th>Section/Part of the Bill Which Directly or Indirectly Limits the Right</th>
<th>Consideration</th>
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<tbody>
<tr>
<td>(1) Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.</td>
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<td>(2) Anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else:</td>
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<tr>
<td>(a) to be told promptly and in detail, in a language that he or she understands, about the nature and reason for the charge;</td>
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<td>(b) to have adequate time and facilities to prepare his or her defence and to communicate with lawyers or advisors chosen by him or her;</td>
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<td>(c) to be tried without unreasonable delay;</td>
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<td>(d) to be tried in person, and to defend himself or herself personally, or through legal assistance chosen by him or her;</td>
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<tr>
<td>(e) to be told, if he or she does not have legal assistance, about the right to legal assistance chosen by him or her;</td>
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<td>(f) to have legal assistance provided to him or her, if the interests of justice require that the assistance be provided, and to have the legal assistance provided without payment if he or she cannot afford to pay for the assistance;</td>
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<td>(g) to examine prosecution witnesses, or have them examined, and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as prosecution witnesses;</td>
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<td>(h) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court;</td>
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<td>(i) not to be compelled to testify against himself or herself or to confess guilt.</td>
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Not relevant as the proceedings are not ‘strictly’ criminal. However, given that the orders result in detention, the rights under section 22 could be construed as applying to the type of proceedings where a preventative detention order may be made. In this respect the rights provided by section 22(2) are compatible with the terms of the Bill.
<table>
<thead>
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<tr>
<td><strong>22 Rights in criminal proceedings (continued)</strong></td>
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<tr>
<td>(3) A child who is charged with a criminal offence has the right to a procedure that takes account of the child’s age and the desirability of promoting the child’s rehabilitation.</td>
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<td>(4) Anyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher court in accordance with law.</td>
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<tr>
<td><strong>23 Compensation for wrongful conviction</strong></td>
<td></td>
<td>No issue arises on the face of the Bill</td>
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<tr>
<td><strong>24 Right not to be tried or punished more than once</strong></td>
<td></td>
<td>No issue arises on the face of the Bill</td>
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<tr>
<td><strong>25 Retrospective criminal laws</strong></td>
<td></td>
<td>No issue arises on the face of the Bill</td>
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<tr>
<td><strong>26 Freedom from forced work</strong></td>
<td></td>
<td>No issue arises on the face of the Bill</td>
</tr>
<tr>
<td><strong>27 Rights of minorities.</strong></td>
<td></td>
<td>No issue arises on the face of the Bill but an issue may arise indirectly in relation to the interests of the person detained and whether that person belongs to a minority group. Section 40(4) and (5)(d) of the Bill contemplates that such concerns will be taken into account.</td>
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</tbody>
</table>
Charter of Human Rights and Responsibilities

Statement of Compatibility

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the [………] Bill 200X.

In my opinion, the [………] Bill 200X, as introduced to the Legislative [Assembly/Council], is compatible with the human rights protected by the Charter. I base my opinion on the reasons outlined in this statement.

Overview of Bill

Human Rights Issues

1. Human rights protected by the Charter that are relevant to the Bill

2. Consideration of reasonable limitations – section 7(2)

   (a) the nature of the right being limited

   (b) the importance of the purpose of the limitation

   (c) the nature and extent of the limitation

   (d) the relationship between the limitation and its purpose

   (e) any less restrictive means reasonably available to achieve its purpose

   (f) any other relevant factors

Conclusion

[Print name and title of Member of Parliament responsible for introduced the Bill]
Charter of Human Rights and Responsibilities

Statement of Compatibility

[Insert name of Bill]

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the [………….] Bill 200X.

In my opinion, the […………] Bill 200X, as introduced to the Legislative [Assembly/Council], is compatible with the human rights protected by the Charter. I base my opinion on the reasons outlined in this statement.

Overview of Bill

Provide an overview of the Bill and state its general purpose.

Human Rights Issues

This is the central section of the statement of compatibility.

1. Human rights protected by the Charter that are relevant to the Bill

Identify each human right that the Bill will have an impact upon or engage.

For each relevant right, identify the relevant clause or clauses of the Bill that will have an impact upon that human right.

Analyse how the clause interacts with the right, e.g. the degree to which it will restrict the operation of the right or whether the scope of the right is unaffected.

It may be clear at this stage that the Bill, or a specific clause of the Bill, is compatible with the relevant right or rights it has an impact upon.

2. Consideration of reasonable limitations – section 7(2)

If a clause of the Bill limits or restricts or interferes with the relevant human right you have identified, you should proceed to analyse in detail whether the limitation is reasonable and can be demonstrably justified in a free and democratic society under section 7(2) of the Charter. You should take into account all relevant factors, including the following:
(a) What is the nature of the right being limited?
For example, what are the values underlying the human right? Is it an 'absolute' right in international law?

(b) What is the importance of the purpose of the limitation?
Does the purpose of the limitation or restriction address a public or social concern that is pressing and substantial? Where possible, provide empirical data that demonstrates that the limitation or restriction is important.

(c) What is the nature and extent of the limitation?
In what ways does the Bill or a clause in the Bill limit or restrict the right? How far does this limitation or restriction go?

(d) What is the relationship between the limitation and its purpose?
Is there a rational connection between the limitation or restriction on the right and the purpose it seeks to achieve? Is there proportionality between the purpose of the limitation and the means used to achieve that purpose?

(e) Are there any less restrictive means reasonably available to achieve its purpose?
Describe how the rights limiting clause is within the range of reasonable solutions to the problem, including any safeguards that are incorporated.

(f) Are there any other relevant factors?
For example, does the Bill replace previous legislation which provided for a regime with less strict safeguards for the protection of rights?

Conclusion

This section should contain the conclusion about why the Bill is compatible with human rights.

I consider that the Bill is compatible with the Charter of Human Rights and Responsibilities because [e.g., it does not raise a human rights issue / it raises human rights issues but does not limit human rights / it does limit, restrict or interfere with a human right, but that limitation is reasonable and proportionate].

In the unlikely event that, in the opinion of the member, the Bill is incompatible with the Charter, the statement should describe under the headings above the nature and extent of the incompatibility. The statement could contain a conclusion along the following lines:

I consider that the Bill is incompatible with the Charter of Human Rights and Responsibilities because the restriction it imposes upon the rights identified is more than is necessary to achieve the stated objective. However, I consider that, in the circumstances outlined above, the Bill should proceed nevertheless.

[Print name and title of Member of Parliament responsible for introducing the Bill]
Charter of Human Rights and Responsibilities
Statement of Compatibility
Family Violence Protection Bill 2008

In accordance with section 28 of the Charter of Human Rights and Responsibilities ("Charter"), I make this Statement of Compatibility with respect to the Family Violence Protection Bill 2008.

In my opinion, the Family Violence Protection Bill 2008, as introduced to the Legislative Assembly, is compatible with the human rights protected by the Charter. I base my opinion on the reasons outlined in this statement.

Overview of Bill

The Bill recognises the following principles:

∞ non-violence is a fundamental social value that must be promoted
∞ family violence is a fundamental violation of human rights and is unacceptable in any form
∞ family violence is not acceptable in any community or culture
∞ in responding to family violence and promoting the safety of persons who have experienced family violence, the justice system should treat the views of victims of family violence with respect

In enacting this Bill, the following features of family violence are also recognised:

∞ while anyone can be a victim or perpetrator of family violence, family violence is predominantly committed by men against women, children and other vulnerable persons
∞ children who are exposed to the effects of family violence are particularly vulnerable and exposure to family violence may have a serious impact on children’s current and future physical, psychological and emotional well being
∞ family violence
  o affects the entire community
  o occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion
∞ family violence extends beyond physical and sexual violence and may involve emotional, psychological or economic abuse
∞ family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time
The Bill seeks to:

- maximise safety for persons who have experienced family violence
- reduce and prevent family violence to the greatest extent possible
- promote the accountability of perpetrators of family violence for their actions

The Bill achieves this by providing an effective and accessible system of family violence intervention orders and family violence safety notices and creating offences for contraventions of these orders and notices.

**Human Rights Issues**

**Section 8 – Right to recognition and equality before the law**

Section 8 of the Charter establishes a series of equality rights. The right to recognition as a person before the law means that the law must recognise that all people have legal rights. The right of every person to equality before the law and to the equal protection of the law without discrimination means that the government ought not discriminate against any person, and the content of all legislation ought not be discriminatory.

However, formal equality may cause unequal outcomes, so to achieve substantive equality, differences of treatment may be necessary. To this end, section 8(4) of the Charter provides that certain differential measures do not constitute discrimination, namely, measures ‘taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination’.

**Special provisions for children**

Clause 70 of the Bill engages section 8(3) of the Charter in that it discriminates on the basis of age and disability. Nevertheless, the clause falls within the exception provided for in section 8(4) of the Charter, as it provides special measures taken to assist or advance persons or groups of persons disadvantaged because of discrimination.

Clause 67 of the Bill raises section 8(3) of the Charter as it discriminates on the basis of age. Nevertheless, the clause falls within the bounds of section 8(4) because it constitutes a special measure taken to assist or advance children. In addition, the provision is consistent with section 17(2) of the Charter.

Clause 45 of the Bill engages and limits the right contained in section 8(3) of the Charter as, under clause 17(c)(iv), only a child above the age of 14 may make an application for a family violence intervention order.
**Importance of the purpose of the limitation**
The limitation is designed to enable children who are of an appropriate age and maturity to make their own application to the court where protection is required. The limitation recognises that children under 14 are generally less mature and therefore less capable of making such an application. In this respect, the provision is likely to be protective and consistent with the interests of children and hence consistent with section 17(2) of the Charter.

**Nature and extent of the limitation**
The nature and extent of the limitation is such that children under 14 years of age cannot make applications on their own behalf. Nevertheless, a parent of a child, a police officer or any other person (with a parent’s consent) may apply on behalf of a child, and a child may also be included in an application in respect of a parent (clause 47 of the Bill). The court can also make family violence intervention orders of its own motion to protect children. Accordingly, the nature and extent of the limitation is confined.

**Relationship between the limitation and its purpose**
The limitation is rational because it recognises the capabilities of children and maturity levels of children of different ages. The limitation is proportionate because it applies only to children under 14 and in any event, others may apply on behalf of children if necessary.

**Any less restrictive means reasonably available**
None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

**Section 10(c) – Right not to be subjected to medical treatment without his or her full, free and informed consent**
Section 10(c) of the Charter protects a person’s right not to be subjected to medical treatment unless they have given their full and free informed consent. In this context ‘medical treatment’ encompasses all forms of medical treatment and medical intervention, including compulsory counselling, examinations and testing.

Clause 130 engages, and limits, section 10(c) of the Charter. It requires, on the order of a court, that a person attend counselling (which constitutes a form of medical treatment).
The importance of the purpose of the limitation

The limitation is important as it operates to ensure that a respondent receives treatment that is intended to address their violent behaviour. In this sense, it works to change a respondent’s violent behaviour in respect of which a family violence intervention order has been made. Thus, the limitation also operates indirectly to promote the right to life (pursuant to section 9 of the Charter) and the right of families and children to protection (under section 17 of the Charter).

The nature and extent of the limitation

The extent of the limitation is restricted to requiring a respondent to attend at a particular location for counselling treatment for a fixed period of time.

The relationship between the limitation and its purpose

Given the importance of the purpose, the limitation is both rational and proportionate.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 12 – Freedom of movement &
Section 14- Freedom of religion &
Section 21- Right to liberty and security

This section of the statement discusses clauses which engage the right to freedom of movement in section 12. Certain clauses also engage the rights in section 14 and section 21 which are also discussed where relevant.

Section 12 of the Charter protects various rights in relation to freedom of movement. These rights include the right to move freely within Victoria, the right to choose where to live in Victoria, and the right to be free to enter and leave Victoria. The rights conferred by section 12 apply only to persons who are ‘lawfully’ within Victoria.

Compulsion to attend court

Clauses 49, 32(d) and 134 in the Bill require a person to attend at court at a particular time and place, either as a party or as a witness. To this extent, they limit a person’s freedom of movement.
Importance of the purpose of the limitation

The limitation of the right to freedom of movement is important in these clauses because they all ensure:

- the attendance at court and participation of persons who may be significantly affected by the court’s decision
- the court will have access to the best evidence when making decisions

Nature and extent of the limitation

Under clause 49, a respondent is required to physically appear before a court to give evidence. The limitation is restricted in that it only applies to a respondent to an application for a family violence intervention order.

A person may be summoned, pursuant to clause 32, to attend court on a particular date in order for a court to hear an application. Non-attendance at court is not an offence; however, the court may make an order in the absence of a person.

The limitation in clause 134 is confined to requiring the author of a report to attend court and give evidence, where ordered to do so by a court.

Relationship between the limitation and its purpose

There is a direct relationship between the limitation provided for in clauses 49, 32 and 132 for the purpose of ensuring the effective operation of the justice system by compelling a respondent to attend court so that the court may make enquiries to establish the truth where there are disputed facts or questions of law.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Compulsion to attend counselling

In a similar context, both clauses 129 and 130 engage and limit the right to freedom of movement provided for in section 12 of the Charter. This is because a respondent is compelled to attend an interview or any subsequent counselling which is ordered, at a particular time and place, and is guilty of an offence if they fail to do so, without reasonable excuse.

The importance of the purpose of the limitation

The limitation is important because it provides for the assessment of the respondent’s suitability for counselling and, if appropriate, requirement to attend counselling. Therefore, it aims to change a respondent’s violent behaviour in respect of which a family violence intervention order has been made. The limitation also operates indirectly to promote the right to life (pursuant to section 9 of the Charter) and the right of families and children to protection (under section 17 of the Charter).

The nature and extent of the limitation

The extent of the limitation is restricted to requiring a respondent to attend an interview and any subsequent counselling sessions. This is not considered to be a significant limitation. Further, the counselling order regime is presently a trial only, and is currently due to sunset two years after the commencement of the Bill.
The relationship between the limitation and its purpose

The limitation is both rational and proportionate, given the importance of the purpose and the restricted circumstances in which the limitation operates.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Restricting where a person may be and who they may contact

Insofar as a respondent may be excluded from a protected person’s residence, or may be prohibited from being within a particular distance of a person or prohibited from approaching a person (by telephone or otherwise) pursuant to clause 81, the right to freedom of movement is engaged and limited.

Further, clauses 26 and 29 engage, and limit, the right to freedom of movement provided for in section 12 of the Charter. This is because a person may be prohibited from living in the family home and going within a certain distance of family members, the family home or other places, such as the protected person’s workplace.

It is possible that, in certain circumstances, clauses 81(2)(e), 26 and 29 could engage and limit section 14 of the Charter (freedom of thought, conscience, religion and belief). This is because the clauses could result in a person being prohibited from being within a specified distance of a particular spiritual leader or religious centre.

The importance of the purpose of the limitation

In each case, the reason for the limitation is highly important, as it operates to protect a protected person from further family violence. In this sense, the limit on the rights is balanced against the protection of families and children and the right to life.

The nature and extent of the limitation

Although a respondent may be excluded from certain areas or places, a respondent does have the right, under clause 109 of the Bill, to apply for the variation or revocation of a family violence intervention order if there is a change in circumstances.

The operation of clauses 26 and 29 means that a respondent may be prohibited from living in the family home and going within a certain distance of family members, the family home or other places. However, a family violence safety notice is of limited duration (up to 72 hours), may only be made after hours (that is, after 5pm or before 9am on a weekday, and at any time on a weekend or public holiday), may only be made in circumstances which require an urgent response and are subject to the supervision of the courts.
The relationship between the limitation and its purpose

The relationship between the limitation and its purpose is both rational and proportionate, given that the legitimate objective of the provisions is to protect a protected person and any children of a respondent from a respondent by, in the case of clause 81, imposing conditions which restrict a respondent from coming within a certain distance of a protected person and from accessing certain places, including a protected person’s residence.

Clauses 26 and 29 aim to protect a person from further family violence. A respondent’s rights are protected by the fact that they may be granted access to particular places that they are prohibited from entering or going near in circumstances where they are accompanied by a police officer and the police officer has made all reasonable enquiries to ensure that this is practical in the circumstances. The limitation balances the rights of a respondent and the rights of a protected person.

Any less restrictive means available

None apparent.

On balance, the limitation in each clause is reasonable and demonstrably justified in a free and democratic society.

Arrest and detention of a person

Several clauses in the Bill provide for the arrest and detention of a person.

Clauses 50, 51, 52, 124 and 38 engage and limit section 12 of the Charter as a respondent may be arrested and detained or held in custody, or bailed in accordance with the provisions of the Bail Act 1977.

Further, clause 15 engages and limits the right in section 12 of the Charter, as it provides for the detention of a person if they fail to comply with a direction given under clause 14.

The importance of the purpose of the limitation

The limitations that these clauses create are important because they are each designed to protect people from family violence prior to a hearing for a family violence intervention order or charges for contraventions of intervention orders or safety notices being determined by the court.
The nature and extent of the limitation

The limitation created by clauses 50, 51 and 52 is confined to empowering a police officer to arrest and detain a respondent, hold them in custody, or bail them in accordance with the provisions of the Bail Act 1977. This may only occur subsequent to the issuing of a warrant by a registrar or magistrate in situations of urgency.

In the case of clause 124, when a police officer believes on reasonable grounds that a person has breached a family violence intervention order, they can arrest and detain that person without a warrant.

The limitation in clause 15 is restricted to situations where a person refuses to comply with a direction under clause 14 and had been informed that a failure to comply with such a direction may result in the person being apprehended and detained. The nature and extent of the limitation is also minimised by the context in which any detention occurs, namely the protection of another person from family violence. This is further enhanced by the fact that the period for which a person may be apprehended and detained is limited to six hours (with a possible extension to 10 hours by a court order).

Under clause 38, when a police officer believes on reasonable grounds that a person has contravened a family violence safety notice, they can arrest and detain that person without a warrant. Arrest for a contravention of a family violence safety notice can only be made if police believe on reasonable grounds that a person has committed an offence under clause 37 of the Bill.

The relationship between the limitation and its purpose

The limitation that each of the clauses imposes is rational and proportionate, given that the legitimate objective of the provisions is to protect a person from further family violence incidents, a breach of a family violence safety notice, or a breach of a family violence intervention order. Furthermore, rights to bail remain available to a respondent. Thus, the limitation strikes a fair balance between the rights of a respondent and the rights of a protected person.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Clauses 50, 124, 38 and 18 also engage the right to liberty in section 21 of the Charter which provides that a person must not be subjected to arbitrary arrest or detention, and must not be deprived of his or her liberty except on grounds and in accordance with procedures established by law. However, none of these clauses limit the right to liberty because the arrest or detention is not arbitrary and the deprivation of liberty is on grounds and in accordance with procedures established by law. In light of these reasonable and carefully supervised limits, the detention, and any court authorised extension, is not arbitrary.

Direction to attend a particular location

Clause 14 engages and limits section 12 of the Charter, the right to freedom of movement. This is because a police officer may direct a person to remain or go to and remain at a specified location (while the officer seeks a family violence safety notice, warrant or interim intervention order), where it is reasonable in the circumstances.
The importance of the purpose of the limitation

The limitation is important as it operates to protect a protected person from family violence. In this sense, the limit on the right to freedom of movement is balanced against the protection of families and children and the right to life.

The nature and extent of the limitation

When a police officer intends to make an application for a family violence intervention order or a family violence safety notice, the officer may direct a person to remain or go to and remain at a particular location. The person must be warned of the consequences of failing to comply with the direction.

The relationship between the limitation and its purpose

The limitation is rational and proportionate to the purpose it seeks to achieve, given that the legitimate objective of the provision is to protect a protected person from family violence. The limitation balances the rights of a respondent and the rights of a protected person.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 13 – Privacy

Section 13 confers a number of rights regarding privacy. Specifically, a person has a right not to have their privacy, family or home unlawfully or arbitrarily interfered with or their reputation unlawfully attacked.

Privacy encapsulates concepts of personal autonomy and human dignity. It encompasses the idea that individuals should have an area of autonomous development, interaction and liberty – a ‘private sphere’ free from government intervention and from excessive unsolicited intervention by other individuals. Privacy comprises bodily, territorial, communications and information privacy.

Disclosure of Personal Information

Part 4 engages the right to privacy because a person’s personal information, such as the person’s name and address, may be divulged to a court in an application for a family violence intervention order. In particular:

∞ Clause 45 of the Bill empowers a police officer to make an application for a family violence intervention order, regardless of whether an affected family member consents to such an application being made.

∞ Clause 85 engages the right as it requires the court to ask a respondent who is excluded from a protected person’s residence to provide a court with an address for service; however, there is no penalty if a respondent fails to give such an address.

In addition:

∞ Clause 156 engages the right because where a court makes a family violence intervention order against a carer, the registrar is required to serve a copy of the order on the carer’s employer or organisation for whom the carer provides the care to the client.
Clause 32 engages the right to privacy because it provides for personal information to be included in family violence safety notices.

Clauses 140, 141, 142 and 143 of the Bill all deal with the confidentiality of personal information disclosed in the process of determining whether counselling orders are appropriate and any subsequent counselling sessions. The provisions engage the right to privacy because they provide for disclosure of personal information in certain limited circumstances.

Clause 207 of the Bill obliges certain public sector organisations to disclose information they hold about a respondent to a police officer if that police officer applies for such information in order to serve documents.

While these provisions interfere with a person’s right to privacy, they do so in a manner that is neither unlawful nor arbitrary. This is because there are proper processes through which the information is divulged and the purpose of the interference is in accordance with the provisions, aims and objectives of the Charter (particularly section 17, which provides for the protection of children and families).

Further, in relation to Part 4, the information is provided to the court only and the Bill restricts publication of proceedings in relation to family violence, thus ensuring that a person’s personal details are only divulged to a limited class of recipients. Also, the privacy of any third party is protected, as the Bill provides that where a respondent gives an address for service that is not their place of residence or work, any other person may refuse to consent to the use of the address as the address for service of documents under the Bill, invalidating the address for service of documents in the process (see clauses 85(4) and 33).

Privacy of the home

Clause 159 of the Bill engages the right to privacy of the home because it provides in certain circumstances for a search for firearms, firearms authority, ammunition and weapons without warrant, of a person’s home or former home. Clause 157 engages the right because it allows a premises to be searched for a person without warrant, in certain circumstances. Clause 160 engages the right because it allows for a search of third parties’ premises for firearms or weapons under warrant.

Additionally, the exclusion of a respondent from a protected person’s residence, may have the effect of interfering with a respondent’s right to privacy of the home. Such exclusion is provided for clause 81(2)(b), clause 82, clause 83 (in relation to child respondents) and clause 29 of the Bill.

However, in each instance, the right to privacy of the home is not limited as the interference is lawful and not arbitrary. The interference is not arbitrary because it is in accordance with the provisions, aims and objectives of the Charter (particularly section 17, which provides for the protection of children and families) and is reasonable in the circumstances (where the intent is to protect a person from further family violence incidents). Further, in relation to the provisions which provide for exclusion of a respondent from a protected person’s residence, any exclusion only occurs if either police officers (in the case of a family violence safety notice) or a court (in respect of a family violence intervention order) consider it is necessary in the circumstances. Further, in respect of child respondents, clause 83 imposes an obligation on a court to be satisfied as to a number of matters (for example, the availability of alternative accommodation) before making an order excluding a child respondent from a residence. Therefore, the interference with the right is neither unlawful nor arbitrary and the right is not limited.
**Bodily privacy**

The right to privacy provided by section 13 of the Charter is also engaged by clause 16 of the Bill which allows a police officer to conduct a personal search of a person subject to a direction or detention under the holding powers. The clause is designed to ensure the safety of police officers, third parties and the directed person.

The clause does not, however, limit the right to privacy because any interference is lawful and not arbitrary. It is legitimate that a police officer should be able to search a person or items in their possession where that police officer believes, on reasonable grounds, that the person is carrying dangerous objects or possesses objects that may assist them to escape.

Further, the clause clearly and precisely sets out the circumstances that do not amount to sufficient grounds for conducting a search. Therefore, a belief that searching the person or any vehicle, package or thing in the person's possession would provide evidence that an offence has been, or is being, committed is not by itself sufficient grounds for conducting the search.

**Section 15 – Freedom of expression**

Section 15 establishes a number of rights relating to freedom of expression. It protects the right to hold an opinion without interference and the right to seek, receive and impart both information and 'ideas of all kinds' anywhere and in any form. Section 15(3) of the Charter, however, contains a specific limitation on the right to freedom of expression. This invites consideration of particular matters that are identified as ones which, when satisfied, specifically justify a restriction on the right.

The application of section 15(3) involves satisfying a number of conditions. First, the relevant restriction proposed on the right to freedom of expression must be 'lawful'. Second, the relevant restriction must be imposed for a particular purpose, either to respect the rights and reputation of other persons, or in order to protect national security, public order, public health, or public morality. Third, the relevant restriction must be 'reasonably necessary' for one of these purposes.

Clause 81(2)(d) (prohibiting contact of protected person), clause 193 (court declaring a person to be a vexatious litigant), clause 166 (limiting publication of identifying information from proceedings) and clause 17 (limiting who a person can contact if they are detained by police under a holding power) are all clauses which engage the right to freedom of expression under section 15(2) of the Charter. However, the clauses all constitute lawful restrictions on the right to freedom of expression because each restriction is for the purpose of public order and the effective operation of the justice system. Further, the restriction in clause 166 is also a lawful restriction to respect the rights of other persons, namely, the right of other persons to privacy protected in section 13 of the Charter. In addition, clause 17 does not restrict communication with a friend or relative (other than the affected family member) and is therefore consistent with the rights of families in section 17(1) of the Charter.

**Restriction on children giving evidence**

Clause 45 also engages, and limits, section 15(2) of the Charter. This is because a child is restricted from giving evidence in a proceeding in respect of an application for a family violence intervention order.
The importance of the purpose of the limitation
The purpose of the limitation is to protect the best interests of a child, as provided for under section 17(2) of the Charter.

The nature and extent of the limitation
The restriction on the giving of evidence only applies to persons under the age of 18. The extent of the limitation is circumscribed because a court is required to consider, when determining whether to allow a child to give evidence, the desirability of protecting children from unnecessary exposure to the court system and the harm that could occur to a child and to family relationships if a child gave evidence.

The relationship between the limitation and its purpose
There is a direct relationship between the limitation and the purpose of protecting the best interests of the child.

Any less restrictive means available
None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Compulsion to provide information to court

Clauses 129 and 134 engage, and limit, the right to freedom of expression because they provide for a specified person to be required to express information in an report for the court regarding an assessment of eligibility for counselling and may require that person to give evidence at a hearing to which the report relates.

The importance of the purpose of the limitation
The limitations in clauses 129 and 134 are important as they operate to ensure that a court is provided with relevant evidence about the eligibility of a respondent for counselling which is necessary for the court to determine whether it should order a person to attend counselling under clause 130.

The nature and extent of the limitation
In the case of clause 129, the limitation is restricted to requiring a report to be provided to the court, whilst clause 134 requires a person to give evidence in person to the court.

The relationship between the limitation and its purpose
Given the importance of the purpose, the limitation is both rational and proportionate.
Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 17 – Protection of families and children

Section 17 provides for the protection of families and children. The Charter provides that families must be protected by society and the state. However, while family unity is an important Charter right, it must be balanced with other rights. Section 17(1) might be qualified by the special right of children to protection in section 17(2) (for example, when children are removed from a situation of family violence). The Bill achieves an appropriate balance between the protection of the family unit (section 17(1) of the Charter), the protection of the rights of family members to life (in section 9) and security of the person (in section 21) and the protection of the rights of the child to such protection as in his or her best interests (in section 17(2)).

Section 20 – Property rights

Section 20 establishes a right not to be deprived of property other than in accordance with law.

Division 5 of Part 4 governs the conditions that may be made in respect of family violence intervention orders. Several clauses in this Part engage the right to property, in particular:

- Clause 81(2)(b) enables a family violence intervention order to include a condition which excludes a respondent from a protected person’s residence
- Clause 86 (and clause 81(2)(c)) empowers a court to make conditions in relation to the personal property of parties.

Various provisions in Part 7, which deal with the search and seizure of firearms and weapons, also engage the right to property contained in section 20 of the Charter.

However, in each instance, any deprivation of property is not arbitrary because it has a legitimate objective, the protection of a protected person as well as other family members. Further, clause 88 explicitly states that the inclusion of a condition relating to personal property in a family violence intervention order does not affect any underlying rights a protected person or a respondent may have in relation to the ownership of the property. Therefore, to the extent that these clauses allow for the deprivation of property, the deprivation is in accordance with law and there is no limitation on the right.
Section 24 – Fair hearing

Section 24 guarantees the right to a fair and public hearing. The right to a fair hearing applies in both civil and criminal proceedings and in courts and tribunals. The requirement for a fair hearing applies to all stages in proceedings and applies in relation to proceedings in any Victorian court or tribunal.

The purpose of the right to a fair hearing is to ensure the proper administration of justice. This right is concerned with procedural fairness (that is, the right of a party to be heard and to respond to any allegations made against them, and the requirement that the court or tribunal be unbiased, independent and impartial) rather than the substantive fairness of a decision or judgment of a court or tribunal (that is, the merits of the decision).

Rules of Evidence

This right is engaged, but not limited, by clause 65 which provides that the court is not bound by rules of evidence in proceedings for a family violence intervention order. Clause 65 does not apply to proceedings for contraventions of family violence intervention orders, which are criminal in nature.

The rule in clause 65 operates in a context in which there are often no witnesses to family violence and the content of statements made by a victim to family, friends or doctors may be the only available evidence. A court, even if not strictly bound by the rules of evidence, must act judicially and impartially. Clause 65 specifies that in determining what evidence to admit, a court must be satisfied that it is just and equitable to admit such evidence, and that the probative value of the evidence is not substantially outweighed by the danger that the evidence might be unfairly prejudicial to a party, or misleading or confusing. Thus, while the right is engaged, it is not limited, because a person will still have the proceeding decided by a competent, independent and impartial court after a fair and public hearing.

A further safeguard is provided for in clause 66 which states that where evidence is admitted in an affidavit or sworn statement, a party to proceedings may, with leave of the court, cross-examine a person who gives evidence by way of affidavit or written statement. This power is in addition to a party’s general right to cross-examine witnesses.

Accessibility of the Court and Court processes

Clause 69 (and clause 269 in relation to the Victorian Civil and Administrative Tribunal) provide for alternative arrangements for giving evidence and conducting proceedings. These provisions engage, but do not limit the right to a fair hearing because a person will still have the proceeding decided by a competent, independent and impartial court after a fair and public hearing. Where such alternative arrangements are taken in relation to children, they are in their best interests and therefore work to promote section 17 of the Charter, which recognises the special right of children to protection.
Vexatious litigants

Clause 193 provides that a court may, after hearing or giving a person an opportunity to be heard, make an order declaring a person a vexatious litigant which means that person may not make an application for a family violence intervention order without leave of the court. Clause 196 provides that a person who is declared to be a vexatious litigant may appeal against the order only with leave of the court. Clause 197 provides that a person may apply to vary, set aside or revoke the order only with the leave of a magistrate of the court.

The vexatious litigant provisions engage but do not limit the right to a fair hearing because the provisions do not restrict the person’s right to a fair hearing before the court in relation to whether they are to be declared a vexatious litigant and there are a number of safeguards to ensure that the person is guaranteed a fair hearing in relation to challenging the order. The restriction on the person making applications for a family violence intervention order does not engage the right because at that stage a person is not a party to civil proceedings in respect of the family violence intervention order. The provisions preserve the right of a person to seek leave to apply for a family violence intervention and the person will be able to do so where there is no abuse of process. This additional requirement for vexatious litigants exists to protect people from unsubstantiated claims and to ensure the effective operation of the justice system.

A Public Hearing

Clause 166 of the Bill restricts the reporting of family violence intervention order proceedings and clause 68 enables a court to close proceedings to the public. Clauses 69 and 269 enable a court or Victorian Civil and Administrative Tribunal to admit evidence via closed circuit television in courts and the Tribunal respectively. These clauses engage the right to a fair hearing which includes the right to a public hearing.

However, sections 24(2) and (3) of the Charter enable a court or tribunal to exclude persons or the general public from a hearing and to prohibit the publication of judgments or decisions made by a court. Therefore, these provisions fall within a lawful restriction on the right to a public hearing and do not limit the right.

Right to be heard

It may be argued that clause 173 engages the right to a fair hearing because it enables the Children’s Court to vary or revoke a family violence intervention order of its own motion. However, there is no limitation on the right to a fair hearing because under clause 173(3), the court may only act on its own motion if notice is given of the court’s intention and parties have the opportunity to be heard.

Applications for interim orders

Clause 54 of the Bill engages and limits section 24 of the Charter. This is because an application for an interim order may be determined by a court whether or not a respondent has been given notice of the application and whether or not the respondent is present at the time an order is granted.
**Importance of the purpose of the limitation**

The purpose of the limitation is to ensure the safety of an affected family member from family violence (or to preserve property or protect a child in those circumstances) as swiftly as possible. This is an important purpose in the context of family violence, and the limitation promotes the right to life (section 9 of the Charter) which arguably imposes a positive obligation on public authorities, including Victoria Police, to protect the lives of Victorians in certain circumstances.

**Nature and extent of the limitation**

The nature and extent of the limitation is confined because the duration of an interim order is limited. The order ceases to have effect as soon as the application is finally determined, which is likely to occur within a short period of time.

Further, there are safeguards in place. These include that an applicant must arrange for an application to be served on a respondent as soon as practicable after an order is made (clause 48); a court cannot make an interim order unless it is supported by oral or affidavit evidence (clause 55) (although it can if the application is made by telephone, fax or other electronic communication); and if a respondent is not present, a court must give them a written explanation of the relevant matters set out in the order (clause 57(2)). In addition, the Bill provides scope for an application to be made for the variation or revocation of an interim family violence intervention order (clause 100). Unless the interim order is preceded by a family violence safety notice (the terms of which may apply until the interim order is served), a respondent will not be criminally liable for a breach of an interim order until it is served.

**Relationship between the limitation and its purpose**

Given the importance of the context in which such orders are made, and the safeguards referred to above, the limitation is rational and proportionate to its purpose.
Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 25(1) – The right to be presumed innocent

Section 25(1) protects the presumption of innocence in criminal proceedings. The presumption of innocence is a well-recognised civil and political right and a fundamental principle of the common law. Section 25(1) covers persons charged with an offence whether it is indictable or summary. It requires that the prosecution bears the onus of proving that the accused committed the offence and must prove all elements of a criminal offence.

Provisions that merely place an evidential burden on a defendant (that is, the burden of showing that there is sufficient evidence to raise an issue) with respect to any available exception or defence do not generally limit the right to be presumed innocent because the prosecution still bears the legal burden of disproving that matter beyond reasonable doubt.

Clauses 129 and 130 of the Bill engage, but do not limit, the right to be presumed innocent pursuant to section 25(1) of the Charter. Clauses 129(5) and 130(4) provide that a defendant who, without reasonable excuse, fails to attend an interview or subsequent counselling (as applicable) is guilty of an offence. This places an evidential burden on a respondent with respect to raising such an exception or defence, and the clauses are therefore compatible with the presumption of innocence.

Conclusion

I consider that the Bill is compatible with the Charter of Human Rights and Responsibilities because, to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

ROB HULLS MP
Deputy Premier
Attorney-General
Minister for Industrial Relations
Minister for Racing
Subordinate Legislation Act 1994
(Section 12A)

HUMAN RIGHTS CERTIFICATE

EXAMPLE REGULATIONS 2007

I, ABC, Minister for [Portfolio], certify under section 12A(2) of the Subordinate Legislation Act 1994 that, in my opinion—

*the proposed Example Regulations 2007 do not limit any human rights set out in the Charter of Human Rights and Responsibilities.

OR

*the proposed Example Regulations 2007 do limit a human right set out in the Charter of Human Rights and Responsibilities as follows—
[here set out in respect of each human right limited]

1. the nature of the human right limited; and
2. the importance of the purpose of the limitation; and
3. the nature and extent of the limitation; and
4. the relationship between the limitation and its purpose; and
5. any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

Dated:

ABC
Minister for

*delete if inapplicable
Subordinate Legislation Act 1994

EXEMPTION CERTIFICATE
(Section 12A(3)(b))

EXAMPLE (AMENDMENT) REGULATIONS 2007

I, ABC, Minister for [Portfolio], certify under section 12A(3)(b) of the Subordinate Legislation Act 1994 that, in my opinion the proposed Example (Amendment) Regulations 2007—

*prescribe under section 4(1)(a) of the Act an instrument or class of instrument to be a statutory rule—

*exempt under section 4(1)(b) of the Act an instrument or class of instrument from the operation of the Act—

*extend under section 5(4) of the Act the operation of a statutory rule that would otherwise be revoked by virtue of section 5 of the Act—

and are therefore exempted from the requirement to prepare a human rights certificate under section 12A(1) of the Act.

Dated:

ABC
Minister for

*delete if inapplicable
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<tr>
<td><strong>Section 8: Recognition and equality before the law</strong></td>
<td>Article 16: Everyone shall have the right to recognition everywhere as a person before the law. Articles 2 and 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</td>
<td>Section 8(1). Section 8(2). Section 8(3).</td>
<td>Section 9.</td>
<td>Schedule 1, art. 14.</td>
<td>Section 15(1) Section 15(2).</td>
<td>Section 19 Section 19(2).</td>
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9. **Right to life**

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<tr>
<th>9. Right to life</th>
<th>Article 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</th>
<th>Section 9(1).</th>
<th>Section 11.</th>
<th>Schedule 1, art. 2.</th>
<th>Section 7.</th>
<th>Section 8.</th>
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<tr>
<td>10. Protection from torture and cruel, inhuman or degrading treatment</td>
<td>Section 10: A person must not be: \n(a) subjected to torture, \n(b) treated or punished in a cruel, inhuman or degrading way, or \n(c) subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.</td>
<td>Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.</td>
<td>Section 10.</td>
<td>Section 12(1)(d)(e) and 12(2).</td>
<td>Schedule 1, art. 3.</td>
<td>Section 12.</td>
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<td>11. Freedom from forced work</td>
<td>Section 11(1): A person must not be held in slavery or servitude. \nSection 11(2): A person must not be made to perform forced or compulsory labour. \nSection 11(3) In summary, this qualifies 11(2) by providing that forced or compulsory labour does not include work or service required to be performed: \n• pursuant to a court order, including work required while in lawful detention, \n• during emergency situations, or \n• as part of normal civil obligations.</td>
<td>Article 8: \n1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. \n2. No one shall be held in servitude. \n3. (a) No one shall be required to perform forced or compulsory labour; \n(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;</td>
<td>Section 26.</td>
<td>Section 13.</td>
<td>Schedule 1, art. 4.</td>
<td>No equivalent section.</td>
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<td>11. Freedom from forced work (continued)</td>
<td>(c) For the purpose of this paragraph the term ‘forced or compulsory labour’ shall not include:</td>
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<td>(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;</td>
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<td>(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;</td>
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<td>(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;</td>
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<td>(iv) Any work or service which forms part of normal civil obligations.</td>
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### Freedom of movement

**ICPPR**

**Article 12:**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

---

**Section 12.**

- Section 12. Section 21.
- No equivalent section.

**Section 13.**

- Section 13.
- Section 14.
- Schedule 1, art. 8.
- No equivalent section.

**privacy and reputation**

**Article 17:**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.
|---|---|---|---|---|---|---|

14. Freedom of thought, conscience, religion and belief

Section 14(1): Every person has the right to freedom of thought, conscience, religion and belief, including –

(a) the freedom to have or to adopt a religion of his or her choice; and

(b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

Section 14(2): A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Article 18:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Section 14. | Section 15. | Schedule 1, art. 9. | Section 2(a) and (b). | Section 13. | Section 15. |
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<td><strong>15. Freedom of expression</strong></td>
<td>Article 19: 1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.</td>
<td>Section 16.</td>
<td>Section 16.</td>
<td>Schedule 1, art. 10.</td>
<td>Section 2(b).</td>
<td>Section 14.</td>
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### 16. Peaceful assembly and freedom of association

**Section 16(1):** Every person has the right to peaceful assembly.

**Section 16(2):** Every person has the right to freedom of association with others, including the right to form and join trade unions.

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<td>Article 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.</td>
<td>Section 15(1). Section 15(2).</td>
<td>Section 17.</td>
<td>Section 17.</td>
<td>Schedule 1, art. 11. and 2(d).</td>
<td>Section 16.</td>
<td>Section 17.</td>
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<td>Article 22: Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.</td>
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<td><strong>16. Peaceful assembly and freedom of association (continued)</strong></td>
<td><strong>2.</strong> No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order <em>(ordre public)</em>, the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.</td>
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<td><strong>3.</strong> Nothing in this Article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.</td>
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### APPENDIX H

#### SOURCES OF HUMAN RIGHTS FROM COMPARABLE JURISDICTIONS

|---------|-------|-----------------------------|-------------------------------------------------|-------------------------------------|-----------------------------------------------|-----------------------------------------------|
| **17. Protection of families and children**  
Section 17(1): Families are the fundamental group unit of society and are entitled to be protected by society and the State.  
Section 17(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. | Article 23(1):  
1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.  
Article 24(1):  
1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. | Section 11(1) and 11(2). | Section 28. | No equivalent provision. | No equivalent provision. | No equivalent provision. |
| **18. Taking part in public life**  
Section 18(1): In summary, this provides that every person has the right to take part in public affairs.  
Section 18(2): In summary, this provides that every eligible person has the right to vote and be elected and to have access to the Victorian public service and public office. | Article 25:  
Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:  
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;  
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;  
(c) To have access, on general terms of equality, to public service in his country. | Section 17. | Section 19. | No equivalent provision. | Section 3. | Section 12. |
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<td>19. Cultural rights</td>
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<td>Section 19(1): In summary this provides that persons with a particular cultural, religious, racial or linguistic background have the right, in community with other members of the same background, to enjoy their culture, declare and practise their religion and use their language.</td>
<td>Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.</td>
<td>Section 27.</td>
<td>Sections 30 and 31.</td>
<td>No equivalent provision.</td>
<td>No equivalent provision.</td>
<td>Section 20.</td>
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<td>Section 19(2): In summary this provides specific cultural rights for Aboriginal persons. They have the right, with other members of their community, to enjoy their identity and culture, to maintain and use their language, to maintain their kinship ties and to maintain their distinctive spiritual and material relationship with the land, waters and other resources to which they have a connection under traditional laws and customs.</td>
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<td>20. Property rights</td>
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<td>Section 20: A person must not be deprived of his or her property other than in accordance with law.</td>
<td>No equivalent provision.</td>
<td>No equivalent provision.</td>
<td>Section 25(1).</td>
<td>The First Protocol, Article 1.</td>
<td>No equivalent provision.</td>
<td>No equivalent provision.</td>
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<td><strong>21. Right to liberty and security of person</strong></td>
<td>Article 9:</td>
<td>Section 18.</td>
<td>Section 12(1)(a) and (b).</td>
<td>Schedule 1, art. 5.</td>
<td>Sections 7 and 9.</td>
<td>Section 22.</td>
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<tr>
<td>Section 21(1): Every person has the right to liberty and security.</td>
<td>1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</td>
<td>2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.</td>
<td>3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.</td>
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### 21. Right to liberty and security of person (continued)

Section 21(5): A person who is arrested or detained on a criminal charge (a) must be promptly brought before a court, (b) has the right to be tried without unreasonable delay and (c) must be released if paragraph (a) or (b) is not complied with.

Section 21(6) provides that a person awaiting trial must not be automatically detained in custody, but his or her release may be subject to guarantees to appear –
(a) for trial; and
(b) at any other stage of the judicial proceeding; and
(c) if appropriate, for execution of judgment.

Section 21(7) provides that any person who is deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of the detention. In relation to that application, the court must (a) make a decision without delay, and (b) order the release of the person if it finds that the detention is unlawful.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

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<td>Article 11:</td>
<td>No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.</td>
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<td>22. Humane treatment when deprived of liberty</td>
<td>All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.</td>
<td>Section 19.</td>
<td>Section 22(1): All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. Section 22(2): An accused person who is detained, or a person detained without charge, must be segregated from persons who have been convicted of offences, except where reasonably necessary. Section 22(3): An accused person who is detained, or a person detained without charge, must be treated in a way that is appropriate for a person who has not been convicted.</td>
<td>No equivalent provision.</td>
<td>No equivalent provision.</td>
<td>Section 23(5).</td>
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<td>23. Children in the criminal process</td>
<td>Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.</td>
<td>Section 20.</td>
<td>Section 23(1): An accused child who is detained or a child detained without charge must be segregated from all detained adults. Section 23(2): An accused child must be brought to trial as quickly as possible. Section 23(3): A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.</td>
<td>No equivalent provision.</td>
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<td>Section 24(1): A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.</td>
<td>1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.</td>
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<td><strong>25. Rights in criminal proceedings</strong></td>
<td>Article 14(2): 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.</td>
<td>Section 22(1).</td>
<td>Section 35(3)(h).</td>
<td>Schedule 1, art. 6(2).</td>
<td>Section 11(d).</td>
<td>Section 25(c).</td>
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<td>Presumption of innocence</td>
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<td>Section 25(1): A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.</td>
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<td>Article 14(3)(a): 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.</td>
<td>Section 22(2)(a).</td>
<td>Section 35(3)(a).</td>
<td>Schedule 1, art. 6(3)(a).</td>
<td>Section 11(a).</td>
<td>Section 24(a).</td>
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<td>To be informed promptly of charge</td>
<td>Section 25(2): A person charged with a criminal offence is entitled without discrimination … (a) to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication that he or she speaks or understands.</td>
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<td>To prepare defence</td>
<td>Article 14(3)(b): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: … (b) To have adequate time and facilities to prepare for the preparation of his defence and to communicate with counsel of his own choosing.</td>
<td>Section 22(2)(b).</td>
<td>Section 35(3)(b).</td>
<td>Schedule 1, art. 6(3)(b).</td>
<td>No equivalent section.</td>
<td>Section 24(c) and (d).</td>
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<td>Section 25(2): A person charged with a criminal offence is entitled without discrimination … (b) to have adequate time and facilities to prepare his or her defence and to communicate with a lawyer or advisor chosen by him or her.</td>
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<td>25. Rights in criminal proceedings</td>
<td>Article 14(3)(c): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: … (c) To be tried without undue delay.</td>
<td>Section 22(2)(c).</td>
<td>Section 35(3)(d).</td>
<td>Schedule 1, art. 6(1).</td>
<td>Section 11(b).</td>
<td>Section 25(b).</td>
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<td>25. Rights in criminal proceedings</td>
<td>To defend in person or through a lawyer</td>
<td>Section 22(2)(d).</td>
<td>No equivalent provision.</td>
<td>Section 25(e).</td>
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<td>To be informed about legal aid</td>
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<td>Section 25(2): A person charged with a criminal offence is entitled without discrimination …</td>
<td>Article 14(3)(d): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: …</td>
<td>Section 35(3)(e) and (f).</td>
<td>Schedule 1, art. 6(3)(c).</td>
<td>No equivalent provision.</td>
<td>No equivalent provision.</td>
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<td>(d) to be tried in person, and to defend himself or herself personally or through legal assistance chosen by him or her or, if eligible, through legal assistance provided by Victoria Legal Aid under the Legal Aid Act 1978.</td>
<td>(d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.</td>
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<td>No equivalent provision.</td>
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<td>(e) to be told, if he or she does not have legal assistance, about the right, if eligible, to legal assistance under the Legal Aid Act 1978.</td>
<td>Article 14(3)(d).</td>
<td>Section 22(2)(e).</td>
<td>Section 35(3)(g).</td>
<td>No equivalent provision.</td>
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<td>25. Rights in criminal proceedings</td>
<td>To legal aid (if eligible)</td>
<td>Section 25(2): A person charged with a criminal offence is entitled without discrimination … (f) to have legal aid provided if the interests of justice require it, without any costs payable by the accused person if he or she meets the eligibility criteria set out in the <em>Legal Aid Act</em> 1978.</td>
<td>Article 14(3)(d): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: … (f) to have legal aid provided if the interests of justice require it, without any costs payable by the accused person if he or she meets the eligibility criteria set out in the <em>Legal Aid Act</em> 1978.</td>
<td>Section 22(2)(f)</td>
<td>Section 35(3)(g).</td>
<td>Schedule 1, art. 6(3)(c).</td>
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<td>25. Rights in criminal proceedings</td>
<td>To examine witnesses</td>
<td>Section 25(2): A person charged with a criminal offence is entitled without discrimination … (g) to examine, or have examined, witnesses against him or her, unless otherwise provided for by law; and (h) to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses for the prosecution.</td>
<td>Article 14(3)(e): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: … (g) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.</td>
<td>Section 22(2)(g).</td>
<td>Section 35(3)(i).</td>
<td>Schedule 1, art. 6(3)(d).</td>
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No equivalent provision. Section 24(f).
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<td>25. Rights in criminal proceedings</td>
<td>To an interpreter</td>
<td>Article 14(3)(f): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: … To have the free assistance of an interpreter if he cannot understand or speak the language used in court.</td>
<td>Section 22(2)(h).</td>
<td>Section 35(3)(k).</td>
<td>Schedule 1, art. 6(3)(e).</td>
<td>Section 14.</td>
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<td>25. Rights in criminal proceedings</td>
<td>Article 14(3)(g): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: … Not to be compelled to testify against himself or to confess guilt.</td>
<td>Section 22(2)(k).</td>
<td>Section 35(3)(j).</td>
<td>No equivalent provision.</td>
<td>Section 13.</td>
<td>Section 25(d).</td>
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<td>25(3). Rights of children in criminal proceedings</td>
<td>Article 14(4): In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.</td>
<td>Section 22(3).</td>
<td>No equivalent provision.</td>
<td>No equivalent provision.</td>
<td>No equivalent section.</td>
<td>Section 25(i).</td>
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<td>25(4) Right to appeal against conviction and sentence</td>
<td>Article 14(5): Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.</td>
<td>Section 22(4).</td>
<td>Section 35(3)(o).</td>
<td>No equivalent section.</td>
<td>No equivalent section.</td>
<td>Section 25(h).</td>
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<td><strong>26: Right not to be tried or punished more than once</strong>&lt;br&gt;Section 26: A person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.</td>
<td>Article 14 (7): No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.</td>
<td>Section 24.</td>
<td>Section 35(3)(m).</td>
<td>No equivalent section.</td>
<td>Section 11(h).</td>
<td>Section 26(2).</td>
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<td><strong>27. Retrospective criminal laws</strong>&lt;br&gt;Section 27(1): A person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in.&lt;br&gt;Section 27(2): A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence at the time when it was committed.&lt;br&gt;Section 27(3): If a penalty for an offence is reduced after a person committed the offence but before the person is sentenced for that offence, that person is eligible for the reduced penalty.&lt;br&gt;Section 27(4): Nothing in this section affects the trial or punishment of any person for any act or omission which was a criminal offence under international law at the time it was done or omitted to be done.</td>
<td>Article 15:&lt;br&gt;1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.&lt;br&gt;2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.</td>
<td>Section 25(1). Section 25(2).</td>
<td>Section 25(2). Section 35(3)(m).</td>
<td>Schedule 1, art. 7.</td>
<td>Section 11(g).</td>
<td>Section 26(1).</td>
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Set out below is a selection of key texts, commentaries, journals and websites which legislative policy officers may find useful on international human rights law. This list is necessarily selective and is not designed to be comprehensive.

**TEXTS AND COMMENTARIES**

**ICCPR**
- M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, (Kehl, Germany; Arlington USA; N.P Engel 2nd Rev. ed, 2005).

**UK**

**Canada**

**New Zealand**

**Australia**

**South Africa**
JOURNALS

The principal journals dedicated to international human rights law include:

- European Human Rights Law Review (EHRLR)
- Human Rights Law Review (HRLR)
- Human Rights Quarterly (HRQ)
- International Journal of Human Rights (IJHR)
- Interights Bulletin (Interights Bull)
- Netherlands Quarterly of Human Rights (NQHR)
- Review of the International Commission of Jurists (Rev ICJ)

In addition, most international law journals contain articles on international human rights law. For example:

- American Journal of International Law (AJIL)
- European Journal of International Law (EJIL)
- International & Comparative Law Quarterly (ICLQ)

Also, subject matter journals often contain articles on human rights law. For example:

- Medical Law Review
- International Criminal Law Review

WEBSITES

Some of the more useful websites on international human rights law are:

The International Centre for the Legal Protection of Human Rights
www.interights.org

The Centre for International HR Law Inc
www.rightsinternational.org

American Society of International Law
www.asil.org/resource/humrts1.htm

University of Minnesota
Human Rights Library
www1.umn.edu/humanrts

Some websites of relevant organisations are:

United Nations
www.un.org

UN High Commissioner for Human Rights
www.unhchr.ch

Council of Europe
www.coe.int

European Court of Human Rights
www.echr.coe.int/echr

NZ Human Rights Commission
www.hrc.co.nz/home/default.php

Canadian Charter of Rights Decisions Digest
www.canlii.org/ca/com/chart/index.html

Some government websites that may be useful to look at are:

New Zealand Ministry of Justice

UK Ministry of Justice
www.justice.gov.uk/guidance/humanrights.htm

ACT Human Rights Office
www.hro.act.gov.au

ACT Department of Justice Human Rights
Act Website

Victorian Equal Opportunity and Human Rights Commission
www.humanrightscommission.vic.gov.au