

The Victorian Charter of Human Rights and Responsibilities

What is it?

The Charter is an Act of Parliament that clearly sets out our rights and freedoms, and the responsibilities that go with them, in one document. The Charter focuses on civil and political rights, and includes well known democratic rights such as the right to vote and freedom of expression. Other rights protected by the Charter include:

- protection from forced work
- the right to privacy
- the right to a fair trial
- cultural rights

How does the Charter work?

The Charter is an agreed set of human rights, freedoms and responsibilities protected by law. Government departments and public bodies must observe these rights when they create laws, set policies and provide services.

This means that Government, public servants, local councils, Victoria Police and others are required to act in a way that is consistent with the human rights protected under the Charter. These bodies will have to comply with the Charter and take human rights into account in their day-to-day operations.

A human rights filter for new laws

All new laws require a Statement of Compatibility to tell Parliament whether they meet the standards set by the Charter. New laws are required to be checked against the Charter. In the rare circumstance that a law does not meet human rights standards then the Government is expected to explain how and why. In exceptional circumstances Parliament may strike down a law that does not uphold human rights.

From 1 January 2008, the Supreme Court can issue a Declaration of Incompatibility requiring the Government to reconsider legislation but it does not have the power to strike down legislation. Parliament has the final say over what laws are in place in Victoria.

Dealing with breaches of human rights

There is no additional right to legal action just for a breach of the Charter. The focus of the Charter is about getting things right at a planning and policy stage, rather than awarding compensation. It is designed to ensure the Government anticipates and prevents potential human rights infringements. However, the Charter allows a person to raise a human rights argument in a court or tribunal in an existing case.

When complaint handling bodies such as the Health Services Commissioner and the Victorian Equal Opportunity & Human Rights Commission deal with existing complaints, they also need to give consideration to human rights.

Additionally, the Victorian Ombudsman investigates complaints about the Victorian government departments, most statutory authorities and local government. Under the Charter, the Ombudsman's office has the power to investigate whether any administrative action is incompatible with a human right.

Why do we need a Charter?

The Charter is essentially a form of insurance to ensure that human rights are a priority for present and future governments. Experience in other countries shows that when human rights are considered when making laws, developing policies and delivering services, the community is united and people can participate more fully and equally in society.

The Charter will ensure that the State Government respects our basic rights when it provides services such as healthcare, education and law enforcement. New policies and laws will take into account human rights and people who work for the Government must also observe human rights so that people are not treated unfairly.

Although some human rights were protected in various other laws, several other basic and important rights, such as freedom of speech, freedom from forced work, and freedom from degrading treatment, had no clear legal protection.

Who will benefit?

The Charter's main purpose is to ensure that the State Government makes laws fairly. In that sense, everyone will benefit. Over time the Charter will help to change attitudes so that we all understand that rights come with responsibilities – including the responsibility to respect other people's rights.

When will it take effect?

Most parts of the Charter of Human Rights and Responsibilities came into effect from 1 January 2007. The public sector will be bound by the Charter from 1 January 2008. This extra time is to allow for practices and procedures to be changed if necessary.



Your right to rights

The Victorian Charter of Human Rights and Responsibilities explained



Victorian Equal Opportunity & Human Rights Commission

recognition and equality before the law right to life protection from torture and cruel, inhuman or degrading treatment freedom from forced work freedom of movement privacy and reputation freedom of thought, conscience, religion and belief freedom of expression peaceful assembly and freedom of association protection of families and children taking part in public life cultural rights property rights right to liberty and security humane treatment when deprived of liberty children in the criminal process fair hearing rights in criminal proceeding right not to be tried



Victorian Equal Opportunity & Human Rights Commission

3/380 Lonsdale Street
Melbourne Victoria 3000

Advice Line: (03) 9281 7100
Phone: (03) 9281 7111
Fax: (03) 9281 7171
Toll Free: 1800 134 142 (country callers)
TTY: (03) 9281 7110
www.humanrightscommission.vic.gov.au

DISCLAIMER: This information is intended as a guide only. It is not a substitute for legal advice.

YOUR PRIVACY: The VEO&HRC complies with Victorian privacy laws and the confidentiality provisions of the Equal Opportunity Act 1995. Our privacy policy is available online at www.humanrightscommission.vic.gov.au/privacy or by contacting the Commission.

Authorised by Victorian Equal Opportunity and Human Rights Commission. Printed by Print Mode – 12 February 2007

The Victorian Charter of Human Rights and Responsibilities

The Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) is one simple but important law that sets out our freedoms, rights and responsibilities.

This formal recognition of our human rights protects people from injustice and allows everyone to participate in and contribute to society.

Human rights

Human rights are the basic rights that belong to all of us just because we are human beings. They have been recognised around the world as the basic standards required for governments, societies and communities to operate in a respectful and peaceful manner.

Human rights are the foundation for freedom, justice, peace and respect, and are an essential part of any democratic and inclusive society that respects the rule of law, human dignity and equality.

Everyone has the same human rights: men, women, and children, rich and poor, and all nationalities and faiths. Human rights are about recognising and respecting the dignity of other people.

Our human rights include:

- civil and political rights
- economic and social rights
- environmental and cultural rights.

Your rights explained

The Charter protects that group of rights referred to as civil and political rights. These can be grouped under four key principles of Freedom, Respect, Equality and Dignity; and are explained in more detail below.

● Freedom

Freedom of movement, expression, assembly and association

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

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

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

Right to liberty and security

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

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

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

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

Children in the criminal process

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

A fair hearing

A person has a right to a fair hearing. This means the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal after a fair and public hearing. A court or tribunal can exclude the media and the public from a hearing if a law other than the Charter allows it to do so. All judgments or decisions made by a court or tribunal must be made public unless doing so would not be in the best interests of a child, or a law other than the Charter allows it to be kept secret.

Rights in criminal proceedings

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

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

- to be promptly informed about the detail and reason for the charge
- access to legal representation (a lawyer)
- the help of an interpreter
- enough time and facilities to prepare a defence and communicate with a lawyer or advisor
- to be tried without unreasonable delay
- to be present at the trial
- to choose to access legal representation or have legal aid, if eligible. There is no right to legal aid beyond the eligibility set out in the Legal Aid Act 1978 (Vic).
- to examine prosecution witnesses, and to call witnesses on his or her behalf
- the right not to testify against oneself and the right not to be compelled to confess guilt.

These guarantees are set out to ensure that the person charged fully understands the process taking place and has the opportunity to answer the charges brought against them.

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

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

Right not to be tried or punished more than once

A person cannot be tried or punished for the same offence twice if he or she has already been convicted or acquitted of that offence in a court.

Retrospective criminal laws

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

Freedom of thought, conscience, religion and belief

People have the freedom to have or choose a religion or belief, and the freedom to demonstrate their religion or belief. They can do this privately or publicly – at home, at work or in a place of worship – as part of a group or alone. For example, banning the wearing of religious symbols could be a breach of freedom of religion.

Property rights

A person must not be deprived of his or her property except in accordance with law. For example, if there has been a breach of a mortgage contract, it may be lawful to deprive a person of their property as long as proper processes are followed.

Freedom from forced work

A person must not be held in slavery or servitude, or forced to work, except as part of normal civil obligations (such as jury duty), or as part of a court order, or during emergency situations. For example, forced work does not include court ordered community service.

● Respect

Right to life

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

Protection of families and children

Families are entitled to be protected by society and the State. Public authorities should keep this in mind when carrying out their duties. Children have the right to protection according to their best interests, without discrimination.

Cultural rights, including recognition that human rights have a special importance for the Aboriginal people of Victoria

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

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

● Equality

Equal recognition before the law

Every person has the right to equal recognition and protection before the law. Everyone is entitled to equal and effective protection against discrimination, and to enjoy human rights without discrimination. This applies regardless of a person's age, gender, race, disability, religion, marital status and a range of other personal characteristics.

Some groups or individuals, such as people with a disability or members of minority groups may be disadvantaged by discrimination they experience. Measures taken to help people who are disadvantaged by discrimination will not be considered unlawful under the Charter. For example, government funded programs may be directed to particular disadvantaged groups.

Entitlement to participate in public life (including voting)

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

● Dignity

Protection from torture and cruel, inhuman or degrading treatment, medical or scientific experimentation or treatment without consent

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

Protection of privacy and reputation

A person has a right to privacy. This means that someone's personal privacy, family, home or correspondence can not be unlawfully or arbitrarily interfered with. The Charter also prohibits unlawful attacks on a person's reputation.

Humane treatment when deprived of liberty

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

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

Limiting human rights

The Charter recognises that human rights are not absolute but may be limited in certain circumstances. Under the Charter rights may be limited but only when justified in a free and democratic society, taking into account relevant factors. These factors involve the following types of questions:

- Which right is to be limited? Is the right very important in international law, for example, freedom from torture?
- Is the purpose for wanting to limit the human right very pressing and important to society?
- What sort of limitation is being imposed? How could it infringe human rights?
- Is the limitation likely to achieve its purpose? Is the limitation excessive or out of proportion to its purpose?
- Are there any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve?

For example, the right to freedom of expression may be restricted in order to respect the rights and reputation of other people or for the protection of national security, public order, health or morality.

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

The Victorian Equal Opportunity and Human Rights Commission

Under the Charter, the Victorian Equal Opportunity and Human Rights Commission (formerly the Equal Opportunity Commission Victoria) is responsible for:

- ensuring Victorians understand their human rights protections and obligations
- providing an independent assessment of how well State and local governments comply with the Charter

To meet these responsibilities, the Commission will:

- report to the Attorney-General about how the Charter is operating in relation to new legislation and the courts
- work with community organisations to promote human rights and raise awareness about the Charter
- report to the Attorney-General about community perspectives on how the Charter is operating
- investigate particular human rights issues and concerns
- review the policies and practices of public authorities to ensure they comply with the Charter.

These responsibilities are in addition to the Commission's existing responsibilities which include:

- resolving complaints of discrimination, sexual harassment, and racial and religious vilification through its free, impartial conciliation process.
- conducting education, consultancy services and research
- providing legal and policy advice
- informing Victorians about equal opportunity and racial and religious vilification laws.