



Your right to rights

The Victorian Charter of Human Rights and Responsibilities

Frequently Asked Questions



Victorian Equal Opportunity & Human Rights Commission

What is the Charter of Human Rights and Responsibilities?

The Charter of Human Rights and Responsibilities is a law that sets out our freedoms, rights and responsibilities in one document.

The Charter compels State and local government and other public authorities to take human rights into consideration when making laws, setting policies and providing services.

When does the Charter come into effect?

Most parts of the Charter came into effect on 1 January 2007. The public sector will be bound by the Charter from 1 January 2008 to allow for practices and procedures to be changed if necessary.

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.

Under the Charter new policies and laws must take into account human rights and people who work for the Government must observe human rights so that members of the community are not treated unfairly.

All new laws require a Statement of Compatibility to tell Parliament whether they meet the standard set by the Charter. New laws are required to be checked against human rights. In the rare circumstance that law does not meet human rights standards then the Government of the day would be 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.

What is the role of 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) has a number of additional responsibilities. The Commission's role is to:

- ensure Victorians understand their human rights protections and obligations
- provide an independent assessment of how well State and local government complies with the Charter

The Commission will continue to fulfil its existing responsibilities, which include:

- resolving complaints of discrimination, sexual harassment, and racial and religious vilification through its free, impartial conciliation process
- informing Victorians about equal opportunity and racial and religious vilification laws.





Which rights are included?

The Charter includes the well known human rights such as the right to vote, freedom of expression/speech, and other civil and political rights.

It is based on the rights contained in the *International Covenant on Civil and Political Rights* 1966 (ICCPR).

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. This allows us to strike a balance between individual rights and the protection of public interest.

The Charter recognises that all rights come with responsibilities. This includes the responsibility to respect other people's rights.

What is the International Covenant on Civil and Political Rights?

The *International Covenant on Civil and Political Rights* is a United Nations Treaty ratified by 150 countries including Australia.

It contains the main civil and political rights necessary in a democracy.

These include freedom of speech and religion, freedom of association, the right to a fair trial and the right to equality before the law.

Why does Victoria 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 policy and delivering services, the community is more cohesive and people can participate more fully and equally in society.

We need a Charter because some basic rights, such as freedom of speech and religion and freedom from forced work and degrading treatment, have previously had no clear legal protection. The Charter

removes gaps in the protection of human rights and strengthens democracy by ensuring key human rights are protected.

The Charter will ensure that the State and local government and public servants adhere to human rights principles in the delivery of services.

Is the Charter like the US Bill of Rights?

The Charter is not like the US Bill of Rights. It is based on modern laws that operate successfully in the ACT, the United Kingdom and New Zealand.

Rather than US style litigation, the Victorian Charter promotes education and respect for people's rights no matter their background.

Unlike the US model, the Charter can be changed by Parliament to move with the times and reflect changes in community values and attitudes.

Will the Charter hand over too much power to judges and the courts?

Under the Charter, the Victorian Parliament will retain the final say on important matters of legislation and policy, not the courts.

If a law is inconsistent with human rights, the courts will not be able to strike it down. They will only be able to refer it back to Parliament which must then decide whether to amend the law. Parliament will always have the final say.

Won't this just lead to more litigation?

Experience in other countries with similar human rights laws suggest that they do not lead to more litigation.

The experience in the United Kingdom since the enactment of the Human Rights Act has seen very little increase in litigation in that country. In Scotland, which has a similar population to Victoria, human rights arguments were raised in less than 1% of relevant cases in the three year period between 1999 and 2003.

When the Human Rights Act was introduced in the ACT, the legislation was mentioned in only 14 cases out of 1,800 or so cases heard that year.

Does the Charter protect criminals?

The Charter does not protect criminals from dealing with the consequences of their crimes.

The Charter protects the civil and political rights of everyone who is subject to

Victorian law, including victims of crime, police officers, corrections staff, and prisoners and their families and children. The Charter is for all Victorians.

Can people sue for damages if their human rights are breached?

No – there is no additional right to legal action just for a breach of the Charter. 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.

How are we better off under a Charter?

The Charter ensures that the State Government continues to make new laws fairly and gets the balance right between new powers and protecting the rights of Victorians.

The Charter can improve our public services and the behaviour of State Government Departments.

New policies and laws now take into account human rights and people who work for the Government must observe human rights so that members of the community are not treated unfairly.

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