

# Community organisations and the Charter of Human Rights and Responsibilities Act



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Legal information for Victorian community organisations

## This fact sheet covers:

- what human rights does the Charter protect?
- does the Charter apply to your organisation?
- complying with Charter obligations, and
- what happens if your organisation breaches the Charter?

**This fact sheet will assist community organisations operating in Victoria to understand how the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (the Charter) affects them.**

The Charter imposes legal obligations on 'public authorities' to respect, protect and promote human rights. These obligations may apply to the actions or decisions of community organisations if they meet the definition of a 'public authority'. Even if your community organisation is not a public authority, it would be best practice to follow the principles for protecting and promoting human rights set out in the Charter.

## What kind of human rights does the Charter protect?

The Charter protects a range of civil and political human rights such as the right to effective protection from discrimination, freedom of expression (including thought, conscience, religion and belief culture and language) and the right to peaceful assembly and freedom of association.

Also protected are the right to privacy and the right to protection from damage to a person's reputation. Another group of rights include those relating to the procedures of the legal system, such as the right to a fair hearing and to access legal assistance in criminal proceedings.

Other rights focus on families and children, who are considered a particularly important and vulnerable parts of the community and fundamentally deserving of protection.

### Summary of rights under the Charter

Rights	What it means	Section
Right to recognition and equality before the law	Every person is entitled to equal and effective protection against discrimination and to enjoy their human rights without discrimination.	s. 8
Right to life	Every person has the right to life and to not	s. 9

	have their life taken.	
Right to protection from torture and cruel, inhuman or degrading treatment	People must not be tortured, treated or punished in a cruel, inhuman or degrading way and subjected to medical or scientific experiments without their consent.	s. 10
Right to freedom from forced work	A person must not be made a slave or forced into work.	s. 11
Right to freedom of movement	People have the right to move freely within Victoria and enter and leave Victoria when they want. People have the freedom to choose where they live in Victoria.	s. 12
Right to privacy and reputation	Every person has a right to keep their lives private and to not have their reputation unlawfully attacked.	s. 13
Right to freedom of thought, conscience, religion and belief	People have the freedom to think or believe what they want, such as religion.	s. 14
Right to freedom of expression	Every person has the right to think and express what they want. This right may be restricted by the rights and reputations of others and for the protection of national security, public order, public health or public morality.	s. 15
Right to peaceful assembly and freedom of association	People have the right to join groups or unions and to meet peacefully.	s. 16
Right to protection of families and children	Families are entitled to protection. Children are entitled to protection in consideration of their best interests.	s. 17
Right to taking part in public life	Every person has the right to participate in public life, such as running for public office or voting.	s. 18
Cultural rights	Every person has the right to enjoy their own culture, practise their own religion, or use their own language. Aboriginal people hold distinct cultural rights.	s. 19
Property rights	People are protected from having their property taken from them, unless the law allows it.	s. 20
Right to liberty and security of person	Every person has the right to liberty and security, including the right not to be detained or arrested, except in accordance with the law.	s. 21

Right to humane treatment when deprived of liberty	People have the right to be treated with humanity if they are accused of breaking the law and detained.	s. 22
Rights of children in the criminal process	An accused child who is detained or a child detained without charge must not be held with adults. An accused child must be brought to trial as quickly as possible and a child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.	s. 23
Right to a fair hearing	A person has the right to a fair hearing. This means the right to have a charge or proceeding decided by a competent, independent and impartial court or tribunal.	s. 24
Rights in criminal proceedings	A person charged with a criminal offence is entitled to a number of minimum guarantees including the right to be informed of the nature and reason for the charge in a language that the person understands, to have adequate time and facilities to prepare your own case and communicate with a chosen lawyer or advisor, be tried without unreasonable delay, and to defend themselves personally or through chosen legal assistance or if eligible through Victoria Legal Aid.	s. 25
Right not to be tried or punished more than once	A person must not be tried or punished more than once for an offence which they have already been convicted or acquitted of.	s. 26
Retrospective criminal laws	A person has the right not to be prosecuted or punished for things that were not criminal offences at the time they were committed.	s. 27

## Does the Charter apply to your organisation?

Community organisations may be defined as public authorities if they are undertaking functions of a public nature. If a community organisation is considered a 'public authority' it will need to comply with the Charter.

Your community organisation may be a public authority if:

- 1. it is established by legislation and has functions of a public**



TIP

Whether your community organisation is defined as a public authority will often depend

nature (see below for a definition), or

2. its activities include functions of a public nature (see below for a definition) and it is undertaking those functions on behalf of another public authority or the State, whether under a contract or otherwise (e.g. this may occur when your community organisation is delivering services for a Victorian Government department under an outsourcing or tendering arrangement), or
3. regulations made under the Charter say it is one.

For community organisations, factors that may be considered when deciding if the functions you are undertaking are 'of a public nature' include whether your organisation:

- is carrying out activities that are typically considered to be government functions (e.g. providing services for the homeless, seniors, youth or people suffering illness or disability), and
- has an arrangement with government to provide the services on its behalf or receives government funding to carry out the function.



Regardless of whether the Charter applies to your organisation, the best practice approach is for community organisations to abide by the Charter's principles when making decisions or delivering services.

Receiving public funding to perform a function of a public nature does not necessarily mean an organisation is acting on behalf of the State or a public authority.

The Charter provides the example of a non-government school: while the school is undertaking functions of a public nature, it is not acting on behalf of the government, rather it is independent, and is therefore not a public authority for the purposes of the Charter.

Whether your community organisation will be considered a 'public authority' conducting 'functions of a public nature' is a difficult question that will depend on individual circumstances.

Cases suggest the definition of public authority will be interpreted widely and generously in order to protect human rights. For example, a recent Victorian Civil and Administrative Tribunal (VCAT) decision held that a not-for-profit housing agency was a 'public authority' because they undertook functions of a public nature on behalf of the State.

## What can your organisation do to comply with the obligations in the Charter?

The Charter states that it is unlawful for a public authority to act in a way that is incompatible with a human right or to make a decision without giving proper consideration to a relevant human right unless there was no other reasonable conduct or decision that could have been made.

If your community organisation is required or mandated to follow legal rules which clearly contradict the human rights protected in the Charter, then the Charter will take second place to those rules. However, where there is room to interpret the legal rules consistently with the human rights contained in the Charter, you should apply the rules in a way that is compatible with those human rights.

It is important to understand that the Charter allows for all of the rights to be reasonably limited. Your organisation may make decisions and apply procedures that impact on an individual's human rights regularly. This action will be compatible with the Charter as long as it can be demonstrated that the limitation on the right is reasonable.

There are steps that your community organisation can follow to ensure that it complies with these obligations. They should:

- think about where human rights are relevant to your organisations activities and decisions it makes
- where rights are relevant to a decision or action, consider whether or not the decision or action limits a right in the Charter, and
- be able to demonstrate that any limitation on a human right is reasonable in the circumstances meaning your organisation will need to consider whether any proposed limitation is lawful, necessary, and proportionate in the circumstances.

What is 'reasonable' is determined based on objectively justified standards in a free and democratic society based on human dignity, equality and freedom taking into account:

- the nature of the right
- the importance of the purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose, and
- whether there is any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

There are ways that your community organisation can show its support and commitment to complying with the Charter, whether or not your organisation is legally required to do so. These include:

- adding the human rights contained in the Charter to your constitution or creating a statement of objectives that align with the Charter's aims. This will indicate to anyone dealing with or forming part of your organisation that you are keeping the Charter rights in mind while conducting your organisation's affairs or providing services
- outlining the human rights you are committing to when engaging with clients or entering any contracts, such as employee agreements
- requiring other service providers with whom you may contract to comply with human rights standards and principles, and
- educating employees and volunteers within your organisation about the Charter and the human rights protected by it.

## What happens if your organisation breaches the Charter?

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Some common areas where human rights may be breached are in relation to discriminatory practices and behaviours, respecting the privacy of an individual their family and home, and denying observance of cultural/religious practise and language. When deciding whether a community organisation has

breached its obligations under the Charter while acting in the capacity of a public authority, each situation will be considered by looking at the particular facts and circumstances.

Individuals cannot sue for acts or decisions that breach the Charter alone. However, a human rights issue may be raised in conjunction with a complaint under a separate cause of action. This means that if an individual can go to court to obtain a remedy against the public authority via another legal avenue (e.g. through existing anti-discrimination, equal opportunity laws, a review of a decision, or where there has been a breach of a duty of care) then they may also bring an action under the Charter. However, a person is not entitled to an award of damages due to a breach of the Charter.

The Victorian Ombudsman can receive and investigate complaints about whether administrative actions taken by the Government, local councils and public authorities are in breach of, or have not properly considered human rights.

Finally, all Victorian legislation must be interpreted and applied compatibly with the Charter. The Courts have the power to review whether a community organisation (whether a public authority or not) has applied Victorian laws in a manner that is compatible with the Charter. Accordingly, if your organisation is established by, or operates under, Victorian legislation, then there is a high likelihood that the Charter will be relevant to the work of your organisation.

# Resources

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## Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub ([www.nfplaw.org.au](http://www.nfplaw.org.au)) has more information on the following topics:

- ✔ [Getting Started](#)
- ✔ [Running the Organisation](#)
- ✔ [People Involved](#)

## Legislation

- ✔ [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#)
- ✔ [Corporations Act 2001 \(Cth\)](#)

## Other Related Resources

- ✔ [Victorian Equal Opportunity and Human Rights Commission](#)
- ✔ [Australian Human Rights Commission](#) (see [www.humanrights.gov.au](http://www.humanrights.gov.au))
- ✔ [Human Rights Law Centre \(HRLC\)](#) (see [www.hrlc.org.au](http://www.hrlc.org.au))

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