

The Charter of Human Rights and Responsibilities in Victoria

Legal information for Victorian community organisations

This fact sheet covers:

- ▶ the human rights that the Charter seeks to protect and promote
- ▶ how the Charter protects human rights
- ▶ does the Charter apply to your organisation?
- ▶ how does your organisation comply with the Charter?
- ▶ what happens if your organisation breaches the Charter?



The Victorian Charter of Human Rights and Responsibilities (**the Charter**) is set out in the [*Charter of Human Rights and Responsibilities Act 2006 \(Vic\)*](#).

This fact sheet will help community organisations in Victoria understand how the Charter affects them



Disclaimer

This fact sheet provides information on the Victorian Charter of Human Rights and Responsibilities. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

The Charter sets out the basic rights, freedoms and responsibilities of all people in Victoria.

Twenty fundamental human rights are protected in the Charter.

The Charter imposes legal obligations on **public authorities**, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights in the Charter.

In certain circumstances, some rights may be limited. However, this must be necessary and reasonable and there must be clear reasons for the decision.

Even if your community organisation is not a public authority, it is best practice to follow the Charter recommendations.

The human rights that the Charter seeks to protect and promote

The Charter seeks to protect and promote a range of civil and political human rights, including:

- recognition and equality before the law
- the right to life
- protection from torture and cruel, inhuman or degrading treatment
- freedom from discrimination
- freedom from forced work, slavery or compulsory labour
- freedom of movement
- freedom of expression (including thought, religion, culture and language)
- freedom of association and peaceful assembly
- the right to liberty and security of person
- the right to privacy
- the right to protection from unlawful attack on a person's reputation, and
- rights relating to the legal system including criminal proceedings, such as the right to a fair hearing and to legal representation

The Charter also seeks to protect rights in relation to families and children, who are considered a particularly vulnerable part of the community that deserve protection.



See the [Victorian Human Rights Commission website](#) for a full list of the rights covered by the Charter.

How the Charter protects human rights

The Charter seeks to protect human rights by:

- ensuring Victorian laws are interpreted, so far as is possible, in a way that is compatible with human rights
- imposing an obligation that each new law to be enacted must be accompanied by a statement of compatibility with human rights

The Charter recognises that no right is absolute and includes specific limitations in relation to particular rights.

The Charter further recognises that a human right may be subject under law (whether statutory or common law) to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Under the Charter, it is unlawful for a **'public authority'** to act in a way that is contrary to a human right.

When making decisions a 'public authority' must properly consider relevant human rights which may be impacted by the decision.

A public authority can only lawfully limit or restrict human rights if:

- by reason of a law (Commonwealth or otherwise) under law, it could not reasonably act differently or make a different decision
- the act or decision made by the public authority is of a private nature, or
- it would otherwise impede or prevent a religious body (including itself) from acting in conformity with its religious doctrines, beliefs or principles

Does the Charter apply to your organisation?

Your community organisation is required to comply with the Charter if the organisation is a ‘**public authority**’.



What is a public authority?

A public authority is:

- a **public official*** (including employees of the public service, directors and staff of certain public entities, court staff, parliamentary officers, and holders of certain statutory offices)
- an entity established by law (for example, Centrelink, Medicare)
- an entity whose functions are or include **functions of a public nature** (see below for definition), and
- Victoria Police, a council member, a minister, members of parliament committee in an administrative capacity

It does not include parliamentary person or a court or tribunal.

*A **public official** under the *Public Administration Act 2004 (Vic)* includes employees of the public service, including the Head of a government department or an Administrative Office (such as the Secretary to the Department of Justice or the Chairman of the Environment Protection Authority) and the Victorian Public Sector Commissioner. It also includes the directors and staff of certain public entities, court staff, parliamentary officers and holders of certain statutory or prerogative offices.



Tip

Whether your community organisation is defined as a public authority will often depend on the nature of the functions you conduct, rather than what type of organisation you are.

Functions of a public nature

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

- is carrying out a function conferred on your organisation by statute
- conducts a function that is of a regulatory nature
- is carrying out activities that are typically considered to be **government functions** (for example, providing services for the homeless, seniors, youth or people suffering illness or disability), and
- receives government funding to carry out the function

These factors are not an exhaustive list and other factors may be considered in determining if a function is of a public nature.



Example of government function

The Charter provides an example, under the *Corrections Act 1986* (Vic), of a private company with the function of providing correctional services, which is generally identified as being a function of government.

On behalf of the State or a public authority

Just because your organisation is performing functions of a public nature doesn't mean that it's acting on behalf of the State or a public authority, even if it's receiving public funding to perform the function.



Example of not acting on behalf of the State or a public authority

The Charter provides the example of a non-government school – while the school is conducting functions of a public nature, it's **not** acting on behalf of the government, and is therefore not a public authority for the purposes of the Charter.

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

Cases suggest the definition of public authority will be interpreted widely in order to protect human rights.



Case example

The Victorian Civil and Administrative Tribunal has held that a not-for-profit housing agency was a 'public authority' because it conducted functions of a public nature on behalf of the State (*Metro West v Sudi* [2009] VCAT 2025, [88]–[166]).



For more information about the definition of a 'public authority', see the Human Rights Law Centre's note ['The Meaning of 'Public Authority' and the Application of the Charter to Non-Government Bodies'](#).



Tip

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

What must your organisation do to comply with the Charter?

The Charter aims to protect the dignity and respect of people through promoting conduct which complies with human rights standards.

Under the Charter, it is unlawful for a public authority:

- to act in a way that is incompatible with human rights, or
- in making a decision, to fail to give proper consideration to a relevant human right

However, such conduct will not be unlawful if, because of a statute or law, the public authority could not reasonably have acted differently or made a different decision.

This generally imposes two types of obligations on a public authority:

- a **procedural obligation** to give proper consideration to relevant human rights when making decisions (ie. did the decision-maker seriously turn their mind to the possible impact on human rights?), and
- a **substantive obligation** not to act (or fail to act) in a way that is incompatible with the human rights set out in the Charter



Note – interpretation of laws

If your community organisation is required to follow legislation which clearly contradicts the human rights protected in the Charter, the Charter will take second place to the legislation.

However, if there is room to interpret the legislation consistently with the human rights contained in the Charter, you should apply the legislation in a way that is compatible with those human rights.

Your community organisation can show its support and commitment to complying with the Charter by:

- 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 considering the Charter rights while conducting your organisation's affairs or providing services
- outlining the human rights you are committing to when engaging with clients and employees
- requiring other service providers that you contract with to comply with human rights standards and principles, and
- educating employees and volunteers in your organisation about the Charter and the human rights it protects

What happens if your organisation breaches the Charter?

Common areas where human rights may be breached are racial discrimination, sexual harassment or discrimination, and religious vilification.

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.

The aim of the Charter is to protect and promote human rights through prevention, rather than litigation. As such, a breach of the Charter does not of itself entitle a person to claim damages or compensation.

However, a person may initiate legal proceedings on non-Charter grounds and include breach of the Charter as one of the grounds on which the person is seeking relief (among other causes of action).

If a person believes that a public authority has breached the Charter, they can submit a complaint to one of the following organisations:

- [Victorian Ombudsman](#)
- [Victorian Equal Opportunity and Human Rights Commission](#)
- [Disability Services Commissioner](#)
- [Health Services Commissioner](#)



For more information, see:

- [Judicial College of Victoria: Charter of Human Rights Benchbook](#) (a resource to assist judicial officers hearing proceedings with raise issues under the Charter), and
- [Judicial College of Victoria: Charter Case Collection](#) (includes brief summaries of court decisions which have considered the Charter)