

Good Practice Guide

Managing Complaints Involving Human Rights

May 2017



Authorised and published by the Victorian Government, 1 Treasury Place MELBOURNE VIC 3000

Printed by Impact Digital Pty Ltd Brunswick Victoria 3056

May 2017

ISBN 978-1-925549-36-2 (Print)

ISBN 978-1-925549-37-9 (pdf/online/MS word)

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Also published on www.justice.vic.gov.au

Contents

Foreword.....	2
1. Introduction	3
2. Responsibilities under the Charter.....	4
2.1 Is my organisation covered by the Charter?.....	4
2.2 Responsibilities under the Charter	4
3. Roles under the Charter.....	6
3.1 The Human Rights Unit of the Department of Justice & Regulation.....	6
3.2 The Victorian Equal Opportunity and Human Rights Commission.....	6
3.3 The Victorian Ombudsman	7
3.4 The Independent Broad-based Anti-corruption Commission	7
4. Rights, freedoms and protections.....	9
5. Responding to complaints	11
5.1 Receiving complaints	11
5.2 Make an initial assessment.....	12
5.3 Identifying human rights	12
5.4 Limiting human rights	13
5.5 Limitations must be reasonable and necessary.....	13
5.6 Providing clear reasons	14
5.7 Finding a solution.....	15
5.8 Explaining options for review	15
5.9 Learning from complaints.....	16
6. Template form – information to collect to manage complaints involving human rights.....	17
7. Where to go for further information.....	17

Appendices

A: Complaints handling flowchart	18
B: Flowchart – considering human rights issues in complaints	19
C: Acknowledgment letter example.....	20
D: Human rights triggers in public authorities' activities.....	21
E: Process for dealing with human rights complaints.....	29
F: Template form – information to collect to manage complaints involving human rights.....	31

Foreword

Victoria has a proud history of advancing human rights and striving to eliminate unfair discrimination. In 2006, Victoria became the first state to legislate for the protection of human rights, by introducing the Charter of Human Rights and Responsibilities.

Public service bodies deliver many important services to the community that can affect people's rights. The protection and promotion of human rights is key when providing services such as corrective services, police and emergency services, education and health care.

There are times where citizens are not wholly satisfied with the services they receive. At such times, there needs to be an effective process to ensure that complaints are responded to quickly and appropriately.

It is important that public sector employees consider a person's human rights not only when delivering services and programs, or drafting legislation and policies, but also when managing complaints. Attention to human rights encourages focus on the impact a decision-maker's decision will have on the person, and ensures that they are mindful of people's rights and the Charter's values of freedom, respect, equality and dignity. These

values are fundamentally important and they reflect what each individual expects when they engage with public sector employees.

The Charter has been instrumental in building a human rights culture in Victoria, especially within the Victorian public sector. But there is more work to be done. In taking a human rights approach to complaints, public sector employees will be helping to strengthen a human rights culture in Victoria.

I thank the Victorian Ombudsman, the Victorian Equal Opportunity and Human Rights Commission and the Independent Broad-based Anti-corruption Commission for their valuable contribution to the Guide, given their responsibilities under the Charter and their expertise in managing complaints.



Greg Wilson
Secretary
Department of Justice & Regulation

1. Introduction

The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) is an Act of the Victorian Parliament that sets out the rights and freedoms shared by everyone in Victoria and protected by law. The rights and freedoms in the Charter include, for example, the right to equality and non-discrimination, protection from cruel inhuman and degrading treatment, the right to liberty and security, privacy rights, property rights, freedom of association and freedom of expression.¹

The Charter promotes a culture where people working in state and local government protect and consider everyone's human rights in service delivery, policy, decisions and legislation.

Human rights under the Charter apply to all people in Victoria and at all times; they are not limited by citizenship.

The Charter requires laws to be interpreted, where possible, to be compatible with human rights. The Charter requires new legislation to be introduced with a Statement of Compatibility that shows how the legislation is compatible with human rights. The Charter requires all public authorities (state and local government and associated agencies) to act compatibly with human rights and make decisions that give proper consideration to human rights.

Victoria and the Australian Capital Territory are the only Australian jurisdictions to have rights protected in this way – but the Charter does not stand alone. Along with other laws that protect people's human rights (such as the *Equal Opportunity Act 2010* (Vic)), the Charter is part of a broader framework of human rights protections, including Australia's legal obligations under key international human rights treaties.

The values in the Charter are also reflected in the *Public Administration Act 2004* (Vic) and the *Code of Conduct for Victorian Public Sector Employees*. This means that public sector employees should respect and promote the human rights in the Charter as a condition of employment.

The Human Rights Unit of the Department of Justice & Regulation (DJR) has drawn on the expertise of the Victorian Ombudsman, the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), and together produced this guide to help you to effectively deal with complaints about human rights.

This guide is intended to inform, complement, be incorporated into, or be read in conjunction with your organisation's own complaint handling procedures. It is good practice to have a transparent, accessible, responsive complaints process.²

An effective human rights culture in Victoria is not just about managing complaints. It is also about public authorities taking a human rights-based approach to their work. Not only so that you might uphold and reinforce human rights, but also to reduce the likelihood of a human rights complaint being made in the first place. It is also about creating a culture that embeds the respect and protection of human rights as a core workplace value.

¹ See Part 4 of the Guide for more information on the Charter rights.

² The complaints practices offered in these pages is based on the *Australia/New Zealand Standard, Guidelines for complaint management in organizations* (AS/NZS 120002:2014).

2. Responsibilities under the Charter

2.1 Is my organisation covered by the Charter?

The Charter imposes an obligation on all 'public authorities' to act compatibly with human rights. The term 'public authority' applies broadly to state and local government and other bodies exercising functions of a public nature, including:

- **every department and public servant**
- **local councils, including councillors and council staff**
- statutory authorities that perform a public function (such as VicRoads and WorkSafe)
- entities that are not part of government, but perform functions of a public nature on behalf of government (these might be private sector organisations, such as private prisons, or a community organisation contracted by the Victorian Government)
- Ministers
- Victoria Police
- public boards (such as water boards)
- courts and tribunals when they are acting in an administrative capacity.³

2.2 Responsibilities under the Charter

To comply with the Charter, public authorities must:

1. act compatibly with human rights; and
2. give proper consideration to relevant human rights when making decisions.⁴

Acting compatibly

It is *unlawful* for a public authority to act in a way that is 'incompatible' with human rights. 'Acting' includes a failure to act.

An action is incompatible with a human right if it unreasonably limits a person's enjoyment of that right.

Whether a limitation on a person's rights is reasonable depends on whether the limitation is a proportionate response to the issue. This is discussed further below in Part 5.5.

Similarly, a public authority will not have acted unlawfully if, as the result of another law, it could not have reasonably acted differently or made a different decision.⁵

Case study: acting compatibly with human rights

IBAC conducted a review of an incident in which eight Victoria Police officers were involved in arresting and detaining suspected juvenile offenders in Williamstown. A complaint was lodged which made numerous allegations including assault, racial discrimination, racial targeting and breach of the right to be protected from discrimination (section 8 under the Charter).

IBAC identified a range of deficiencies in the way that Victoria Police handled this matter. IBAC also identified racist statements in emails between some officers involved, which indicated systemic issues relating to racism.

Victoria Police acknowledged the inappropriate behaviour of the officers involved, and advised they had since organised workplace guidance and training on the Charter.

Source: IBAC

Giving proper consideration

The Charter also says that public authorities *must* properly consider relevant human rights when making decisions. 'Proper consideration' means:

- understanding in general terms which rights might be relevant
- understanding whether those rights will be interfered with by the decision, and if so, how
- seriously turning your mind to the possible impact of the decision on a person's human rights and how this might affect the person
- identifying other, possibly opposing interests or obligations that will need to be balanced in your decision
- balancing competing private and public interests.

You do not need to refer to a relevant Charter right by name or section number, or in a legalistic way, as long as the right is understood and considered in substance.

³ Charter, section 4.

⁴ Charter, section 38.

⁵ Charter, section 38(2).

Case study: giving proper consideration to human rights

A practising Muslim woman accessed public crisis accommodation. She told the service that she could not live or reside in premises with men.

Unfortunately the service referred her to a backpacker's hostel where the majority of residents were men. She felt intimidated having to share bathrooms and kitchen facilities with men.

The Homelessness Advocacy Service (HAS) considered that by housing the woman in the hostel, the service might have failed to give proper consideration to her cultural and religious rights (under sections 19 and 14 of the Charter).

The service agreed to find her suitable accommodation at an all-women rooming house.

*2014 Report on the operation of the Charter of Human Rights and Responsibilities
Source: VEOHRC*

Case study: allegations of abuse poorly documented

In an investigation about the assault of a Disability Services Client where a man was dragged along the floor by two staff members, the Ombudsman found that staff had acted incompatibly with the man's 'right to protection against cruel, inhuman or degrading treatment' (under section 10 of the Charter).

The investigation also highlighted that allegations of excessive use of force by staff against clients were poorly documented and therefore not resolved by the department at the first instance.

The Ombudsman noted that good record keeping practices foster a culture of transparency and accountability that needs to be in place to ensure that the rights of people deprived of their liberty are protected.

*Investigation - Assault of a Disability Services Client by
Department of Human Services Staff
Source: Victorian Ombudsman*

Tip: record your human rights assessment

Recording your consideration of a person's human rights can assist you if your decision is later the subject of a complaint. Good record-keeping is also consistent with best practice in complaint handling.

3. Roles under the Charter

3.1 The Human Rights Unit of the Department of Justice & Regulation

The Department of Justice & Regulation's Human Rights Unit is the central point for information and resources on the Charter within the Victorian Government. Its main role is to provide advice and support to staff across the Victorian Public Sector (VPS) about the human rights impacts of policy and legislation. It has led and coordinated the preparation of this Guide.

The Human Rights Unit supports all Victorian departments to understand the Charter's requirements and to ensure that human rights are a consideration in all areas of government policy and legislation, decision-making and service delivery.

The Human Rights Unit also assists the Attorney-General in Charter proceedings before the Victorian courts, and helps coordinate Victoria's contribution to Australia's reporting under various international human rights conventions.

The Human Rights Portal provides information about the Charter: <http://humanrights.vgso.vic.gov.au/>. The Human Rights Unit and the Victorian Government Solicitor's Office jointly manage the Human Rights Portal. The Human Rights Unit can provide advice on whether a complaint raises human rights, or whether an issue may fall within a particular right.

3.2 The Victorian Equal Opportunity and Human Rights Commission

The Victorian Equal Opportunity and Human Rights Commission is an independent statutory body with responsibilities under the following laws:

- the Charter
- the *Equal Opportunity Act 2010*
- the *Racial and Religious Tolerance Act 2001*.

VEOHRC aims to create a community where every person values, understands and respects human rights and equal opportunity. To achieve this vision, VEOHRC works with others to eliminate discrimination and build a community that respects and promotes human rights and equal opportunity.

VEOHRC's role under the Charter is that of an 'independent monitor'.⁶ In practice this means VEOHRC does the following to help protect and promote human rights:

- provides advice on the Charter via an enquiry line to both community and public authorities
- provides education and training services on Charter rights and responsibilities
- intervenes in court or tribunal proceedings to provide an expert view on questions of law relating to the Charter
- prepares an annual report on how the Charter is operating in practice
- conducts reviews for public authorities on programs and policies to ensure compatibility with the Charter
- operates the VPS Human Rights Network and publishes resources on how to build a human rights culture
- advises the Attorney General on anything relevant to the operation of the Charter.

"The Charter reflects the fundamental values we want to see protected and promoted in our community.

Complaints prompt us to question whether we could do things better. From a human rights perspective, they are a critical point for you to check whether your organisation is promoting and protecting human rights. They allow you the opportunity to make a positive difference and to help us build a strong human rights culture in Victoria.

I encourage you to consider and incorporate key aspects of this Guide into your own complaints handling policies and procedures. You are also welcome to contact the Commission for information about how the Charter operates in practice."

Kristen Hilton
Victorian Equal Opportunity and Human Rights
Commissioner

⁶ Second Reading speech, Part 4 – Victorian Equal Opportunity and Human rights Commission, http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/legis/vic/bill_em/cohrarb2006443.pdf

3.3 The Victorian Ombudsman

The Victorian Ombudsman is a constitutionally independent officer of the Parliament. The office operates in accordance with the *Ombudsman Act 1973*.

The introduction of the Charter provided the Ombudsman with the express function to 'enquire into or investigate whether administrative action is incompatible with a human right'.⁷ An 'administrative action' includes an action or decision, failing to take an action or make a decision, or formulating a proposal or recommendation.

A lot of what people know about the Ombudsman is based on the investigation reports tabled in Parliament. This is only a fraction of what the office does.

The Ombudsman's purpose is to ensure fairness for Victorians in their dealings with the state's public sector, to improve public administration and protect human rights. The Ombudsman's role in relation to human rights involves:

- taking complaints from the public about State Government departments, statutory authorities and local councils (and private contractors acting on behalf of those bodies)
- making enquiries and resolving complaints informally where possible
- investigating when needed and making recommendations for change
- examining systemic problems in public administration ('own motion' powers)
- promoting best practice in public administration through good practice guides and education workshops
- sharing complaint information with authorities to improve their administrative practices.

When conducting enquiries or investigations, the Ombudsman has regard to human rights principles contained in the Charter, in international law, and in the judgments of domestic, foreign and international courts and tribunals. The Ombudsman may, form an opinion that a decision or action is 'unlawful', 'unreasonable' or 'wrong'⁸ where it does not meet the minimum standard established in the Charter or in an international human rights instrument.

Most of the Ombudsman's work takes place in private, however, the Ombudsman can decide to make it public in some circumstances.

"Respect for human rights is an essential element of a modern democracy and it is the responsibility of every Victorian public servant to uphold the principles expressed in the Charter.

Since its Swedish origins over 200 years ago, the role of an Ombudsman has been to independently investigate complaints about the actions of government agencies and make recommendations for improvement. In doing this, an Ombudsman investigates issues of an overtly human rights nature – from the denial of public housing or education, to the treatment of people in closed environments.

Complaints are free feedback to government about how someone thinks it is doing its job, and using the Charter as a tool to enable, respond to, and learn from those complaints will assist you to protect the human rights of the community you serve.

I encourage all state and local government leaders to learn to love their complaints, and to use this Guide to promote best practice and respect for human rights within their agencies."

Deborah Glass OBE
Victorian Ombudsman

3.4 The Independent Broad-based Anti-corruption Commission

The Independent Broad-based Anti-corruption Commission is responsible for identifying, exposing and preventing corrupt conduct across the public sector. It has jurisdiction for corrupt conduct involving state government, local councils, parliamentarians, the judiciary and contractors performing a public function.

IBAC also has a broad oversight role in relation to Victoria Police.

As part of this role, IBAC has a legislative function to ensure Victoria Police officers have regard to the Charter.⁹

All complaints and notifications received by IBAC relating to Victoria Police are assessed to determine whether the matter should be investigated by IBAC or referred to Victoria Police for action, or dismissed. The assessment process involves considering whether a person's Charter rights might have been breached.

⁷ *Ombudsman Act 1973*, section 13(2).

⁸ *Ibid*, section 23(1)(b) or (g).

⁹ *Independent Broad-based Anti-corruption Commission Act 2011*, section 15 (3)(b)(iii).

3. Roles under the Charter (cont.)

The identification of potential Charter rights breaches is an important factor IBAC considers when determining whether a matter should be investigated by IBAC, or if IBAC should review a matter it has referred to Victoria Police for investigation.

IBAC can conduct an investigation as a result of a complaint, or initiate its own investigation (own motion).

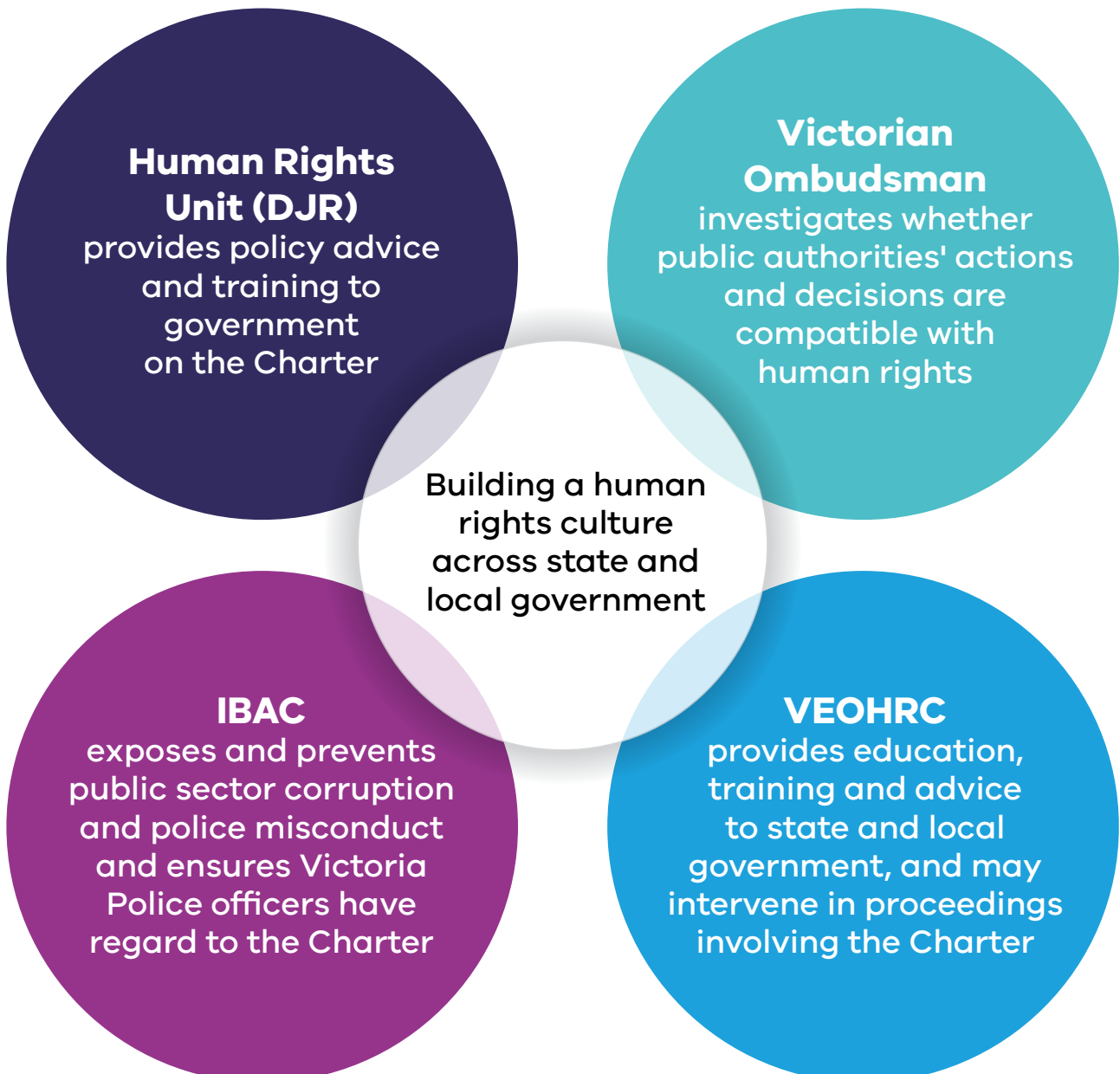
IBAC has the power to apply for search warrants to enter premises and can search and seize documents. It can use surveillance devices and telecommunication intercepts to gather evidence. IBAC also has the power to summons witnesses and conduct examinations.

“Police hold significant powers that can be exercised over their fellow citizens. The exercise of these powers can be vulnerable to misuse, adversely impacting on individuals and the Victorian community as a whole.

Independent, external oversight is critical to help ensure police act fairly, impartially and in accordance with the law. IBAC’s oversight is vital to support community confidence in police integrity and accountability.”

Stephen O’Bryan QC

*Independent Broad-based Anti-corruption
Commissioner*



4. Rights, freedoms and protections

The Charter sets out 20 rights, primarily adapted from the human rights set out in the United Nations *International Covenant on Civil and Political Rights 1966*. Australia became a party to this treaty in 1980. A summary of the Charter's rights follows.

The Charter protects:

The right to recognition and equality before the law (section 8)

Everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

The right to life (section 9)

Every person has the right to life and to not have their life arbitrarily taken. The right to life includes a duty on government to take appropriate steps to protect the right to life.

The right to protection from torture and cruel, inhuman or degrading treatment (section 10)

People must not be tortured. People must also not be treated or punished in a cruel, inhuman or degrading way. This includes protection from treatment that humiliates a person. People must not be subjected to medical treatment or experiments without their full and informed consent.

The right to freedom from forced work (section 11)

A person must not be forced to work or be made a slave. A person is a slave when someone else has control over them.

The right to freedom of movement (section 12)

Everyone has the right to move freely within Victoria and to enter and leave it, and has the freedom to choose where to live.

The right to privacy and reputation (section 13)

Everyone has the right to keep their lives private. A person's family, home or personal information cannot be interfered with, unless the law allows it.

The right to freedom of thought, conscience, religion and belief (section 14)

People have the freedom to think and believe in what they want, for example, practice a religion. They can do this in public or private, as part of a group or alone.

The right to freedom of expression (section 15)

People are free to have an opinion and say what they think. They have the right to find, receive and share information and ideas. This right might be limited to respect the rights and reputation of other people, or for the protection of public safety and order, public health or public morality.

The right to peaceful assembly and freedom of association (section 16)

People have the right to join groups or unions and to meet peacefully.

4. Rights, freedoms and protections (cont.)

The right to protection of families and children (section 17)

Families are entitled to protection. Children have the same rights as adults with added protection according to their best interests.

The right to taking part in public life (section 18)

Every person has the right to take part in public life, such as the right to vote or run for public office.

Cultural rights (section 19)

People can have different family, religious or cultural backgrounds. They can enjoy their culture, declare and practice their religion and use their languages. Aboriginal persons hold distinct cultural rights.

Property rights (section 20)

People are protected from having their property taken, unless the law says it can be taken.

The right to liberty and security of person (section 21)

Everyone has the right to freedom and safety. The right to liberty includes the right to not be arrested or detained except in accordance with the law, and to be brought before a court promptly and tried without unreasonable delay.

The right to humane treatment when deprived of liberty (section 22)

People have the right to be treated with humanity and respect for their dignity if they are accused of breaking the law and are detained.

Rights of children in the criminal process (section 23)

A child charged with committing a crime or who has been detained without charge must not be held with adults. They must also be brought to trial as quickly as possible and treated in a way that is appropriate for their age.

The right to a fair hearing (section 24)

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.

Rights in criminal proceedings (section 25)

There are a number of minimum guarantees that people have when they have been charged with a criminal offence. These include the right to be told the charges in a language they understand; the right to an interpreter; the right to have time and the facilities (such as a computer) to prepare their case or to talk to a lawyer; the right to have the trial heard without delay; the right to be told about Legal Aid if they do not already have a lawyer; the right to be presumed innocent until proven guilty; and the right not to have to testify against themselves or confess their guilt.

Right not to be tried or punished more than once (section 26)

A person will only go to court and be tried once for a crime. This means that if the person is found guilty they will only be punished once. If they are found to be innocent they will not be punished.

Retrospective criminal laws (section 27)

A person has the right not to be prosecuted or punished for things that were not criminal offences at the time they were committed.

5. Responding to complaints

Guiding principles – Good complaint handling systems respond to complaints by:

- acknowledging and dealing with complaints in a **timely** way
- providing **transparent** information about how complaints are handled
- protecting the **privacy** of information as far as possible
- treating everyone involved in a way that is **objective, respectful and fair**
- considering and respecting **human rights**
- promoting **accountability** for decisions.¹⁰

The responsibilities of public authorities (including all departments, public servants and local councils) are diverse and there is no ‘one size fits all’ response to complaints. There are some practices, however, that are common to good complaint handling in every organisation, such as:

- enabling members of the public to make complaints
- responding to those complaints in a timely and effective manner
- learning from the issues raised in the complaints
- improving their systems for taking, engaging with and resolving complaints from members of the public.

The most effective and efficient complaint handling systems use a tiered approach, including frontline resolution, investigation, internal review and external review. The flowchart at Appendix A on page 18 shows how this approach can work in practice.

This section is designed to supplement existing guides and provide practical advice for effectively dealing with complaints that involve human rights issues under the Charter.

5.1 Receiving complaints

Public authorities with a human rights-based approach to complaint handling will actively enable complaints to be made and respond flexibly to the individual circumstances of the person making the complaint.

Not everyone can make a written complaint or call in business hours. We live in a diverse community where people have different communication preferences and needs. Barriers such as language, disability, homelessness or shift work could inhibit access to your organisation.

Case study: recognition and equality before the law

A man suffering from a number of physical disabilities, which made it difficult to write, applied to increase his subsidised taxi travel. He complained to the Ombudsman because the Taxi Services Commission insisted he could only apply by filling out a form.

The Ombudsman made enquiries with the Commission to see whether there were other options for it to obtain the information it needed.

As a result, a manager from the Commission called the man and he was able to provide the necessary information over the phone, so his application could be progressed.

Source: Victorian Ombudsman

¹⁰ These principles, and this part of the Guide (Part 5), are drawn from the Victorian Ombudsman's *Complaints: Good Practice Guide for Public Sector Agencies* (2016); and *Good Practice Guide for Local Government* (2015).

5. Responding to complaints (cont.)

You can ensure your complaint handling system is accessible by:

- accepting complaints by telephone, letter, email, online and in person
- offering free access to a translation and interpreter service
- using the national relay service to communicate with people with hearing or speech impairments
- providing information in accessible formats
- providing support to members of the public to make a complaint if needed
- accepting complaints from authorised representatives if a person has difficulty in complaining themselves.

Tip: acknowledge complaints quickly

Every year the Ombudsman receives hundreds of complaints about delays in complaint handling by public authorities. It was the third most common complaint to the office in 2015–16. These types of complaints can be avoided if you acknowledge and respond to complaints promptly.

The Ombudsman expects public authorities to respond to all complaints unless:

- the person is not seeking a response
- you have previously told them that you may not respond.

The Ombudsman considers that it is good practice to acknowledge complaints within 10 business days,¹¹ unless the complaint is urgent and needs a faster response. You can find an example acknowledgement letter at Appendix C on page 20.

5.2 Make an initial assessment

Not all complaints require the same level of investigation or priority. It helps to 'triage' complaints at an early stage to determine their priority, and how and who should respond.

As part of your assessment, you might need to speak to the person with the complaint to clarify the details of their complaint and the outcome they are seeking.

In relation to human rights, there are three key questions to ask when assessing a complaint:

1. Is a Charter right relevant to the complaint?

2. If so, did the public authority impose a limitation on the right?
3. Was any such limitation reasonable and necessary (i.e. proportionate)?

These three steps are discussed further below, and are set out in the flowchart at Appendix B and table at Appendix E (Steps 1-5).

5.3 Identifying human rights

Some people might expressly complain about their human rights being interfered with. More often, however, people simply complain about the action or decision they are unhappy with. Public authorities with the best complaint handling systems will consider human rights as part of managing every complaint they deal with.

In identifying whether a complaint raises human rights, you could consider, for example, whether the action or decision:

- restricted people – in their movement, where they live, are they detained?
- impacted on someone's privacy?
- involved children?
- related to someone's care and protection?
- had a particular impact on different groups in the community? For example, Aboriginal and Torres Strait Islander people, Culturally and Linguistically Diverse (CALD) people, Lesbian Gay Bisexual Transgender and Intersex (LGBTI) people, people with a disability, women, young people and older people.

A list of examples of the types of matters that might engage each Charter right is outlined at Appendix D on page 21. This list provides examples only and is not exhaustive. It is intended to offer guidance in assessing whether complaints engage human rights.

The flowchart at Appendix D and the table at Appendix E (Steps 1-3) show the process for considering whether a complaint engages human rights.

Tip: identify human rights most relevant to your work

Using the list at Appendix D to consider the functions of your organisation might help you predict where there are likely to be human rights impacts.

¹¹ See *Australia/New Zealand Standard, Guidelines for complaint management in organizations* (AS/NZS 120002:2014).

5.4 Limiting human rights

If a human right is engaged by a complaint, the next question to ask is whether the right has been unreasonably limited.

The rights in the Charter are not absolute – they may be limited or balanced with other rights or the public interest (for instance, public safety) to ensure that in protecting one human right, another right or the public interest is not unreasonably affected.

Limitations on rights must have a clear basis and they must be reasonable and necessary in the circumstances.

The Charter provides that a human right may only be reasonably limited if it can be ‘demonstrably justified in a free and democratic society based on human dignity, equality and freedom’, and taking into account the following factors:

- the nature of the right
- the importance and purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose
- any less restrictive means or approach reasonably available to achieve the purpose that the limitation seeks to achieve.¹²

As part of this process, when making a decision, you should always consider whether there is a way to achieve the objective while minimising the adverse impact on people’s human rights. Limitations on rights must only go as far as necessary to achieve a legitimate aim – there must be a rational and reasonable connection between the limitation and the objective of the policy, law or decision. Material should be available that demonstrates your limitation is justifiable, such as studies, reviews, inquiries and if relevant, international case law.

Tip: questions to ask

To determine whether human rights are engaged, and if so, whether they are limited, you might ask:

- are the person’s human rights being respected, or are they being interfered with unfairly?
- are the person’s human rights being protected?
- are the person’s human rights being enjoyed, that is, can they fully exercise their human rights?

As part of your assessment, you might need to clarify the details of the complaint or obtain information from other areas of your organisation about why an action was taken, how the decision was made or whether proper consideration was given to the person’s human rights. Case notes are helpful to demonstrate this.

Appendix E shows a step by step process for assessing a complaint involving human rights (see Step 4 regarding assessing limits on rights). An example is provided on page 31.

5.5 Limitations must be reasonable and necessary

If a human right has been limited, the next question to ask is whether the limitation is *reasonable* and *necessary* (or can be ‘demonstrably justified’ – as described above at Part 5.4). Another way of expressing this is to ask whether an infringement or limit on a person’s human rights is *proportionate*.

It is useful to take a common-sense approach – is the limitation justified, or will the impact be too severe? (See the process outlined in the flowchart at Appendix B and the table at Appendix E (Step 5)).

A shorthand way to approach this is to ask:

Is it reasonable?

- Is the limitation on a person’s human rights reasonable?
- What is your evidence base for this?

The stronger the interference with a person’s human rights, the stronger the justification needs to be.

Is it necessary?

- Is the action or measure that limited a person’s human rights proportionate to what was trying to be achieved?
- Is there another reasonable way to achieve the goal that is less restrictive of human rights?
- Can it be done better, differently or more fairly?

¹² Charter, section 7(2).

5. Responding to complaints (cont.)

Case study: the use of force was excessive and unjustified

In July 2013 at Flinders Street Station, authorised officers restrained a 15 year old girl suspected of not holding a valid ticket. CCTV and witness footage of the incident was widely released showing the teenager being 'spear tackled' and held face down by three authorised officers for around eight minutes, until police arrived.

The Ombudsman investigated and found that the force by the authorised officers was excessive and unjustified, and incompatible with the teenager's right not to be treated in a degrading way.

"There were less restrictive means reasonably available to the authorised officers to achieve their objectives."

Investigation into an incident of alleged excessive force used by authorised officers, February 2015

Source: Victorian Ombudsman

Case study: the limitation was reasonable and necessary

A young woman living in a residential care unit was presenting an immediate risk of harm to herself and others. The Department of Health and Human Services considered locking her door to keep her safe.

The department recognised that this action would limit her right to liberty and protection from arbitrary detention. However, it was reasonable and necessary in the circumstances. The department had evidence to demonstrate that locking the young woman's door was in her best interest and taken as a measure of last resort.

The matter was regularly reviewed and subject to independent oversight by the Commission for Children and Young People.

2015 Report on the Operation of the Charter of Human Rights and Responsibilities

Source: VEOHRC

5.6 Providing clear reasons

Providing clear reasons for decisions displays fairness, transparency and accountability. It helps the person with the complaint understand why you made your decision, whether or not you upheld their complaint. Wherever possible, it is good practice to call a person with the complaint regarding the reasons for your decision.

When my office makes enquiries with agencies about complaints, we often find they provide us with convincing explanations for their actions. If this information had been communicated to the person originally, they might not have escalated the complaint to us.

Victorian Ombudsman
Deborah Glass, OBE

Good outcome letters:

- briefly describe the complaint and identify the issues
- use plain English and avoid bureaucratic language, acronyms and jargon
- explain the steps you took to investigate or resolve the complaint
- set out any relevant laws or policies in simple language
- clearly identify the outcome to the person who had the complaint and, if you have substantiated the complaint, the remedies you are offering them
- provide reasons for your decision
- give the name and telephone number of an officer they can contact to discuss the outcome
- advise them of the Victorian Ombudsman and any other relevant review rights
- translate information into a language other than English where appropriate
- convey the outcome in a way appropriate to a person's particular communication needs (for example, literacy or disability).

5.7 Finding a solution

To be accountable, public authorities need to be prepared to admit mistakes and correct them. If a person's human rights have been limited or interfered with and the limitation is not reasonable, the next step is to determine what response or remedy can be provided.

It is appropriate to offer a remedy if a decision, or the process leading up to the decision, was unfair or could have been communicated better. Doing so might contribute to preventing the matter from escalating to a review or oversight body.

Options for redress include:

- acknowledging and apologising for an error
- providing a better explanation for a decision or actions
- explaining why the error occurred and the steps your organisation is taking to prevent it happening again
- reversing the decision
- making an ex gratia payment
- disciplinary action
- amending or updating a policy, procedure or practice to ensure the situation does not occur again (you might wish to contact VEOHRC regarding assistance with reviewing policies and processes)
- offering human rights training to relevant staff (you might wish to contact the HRU, VEOHRC or the Ombudsman regarding training)
- other means of redress sought by the person.

The remedy should be fair, practical and proportionate to the seriousness of the issue.

Case study: acknowledging mistakes and taking action

A father complained to the Ombudsman that his wife and children had been asked to leave the motel they were living in because Child Protection had failed to rebook their room. With nowhere else to stay, the family was going to be homeless.

The Ombudsman made urgent enquiries with the department and referred to the family's right to protection under the Charter (section 17 – protection of families and children). Following these enquiries, and to resolve the matter, the department arranged for the mother and children to be provided with alternate accommodation.

Source: Victorian Ombudsman

Tip: protect privacy

Complaints might involve personal information about:

- the person with the complaint
- the officers who are the subject of the complaint
- third parties.

This information needs to be managed in accordance with relevant privacy laws, including the right to privacy under the Charter (section 13).

As a general rule, it is expected that public authorities would:

- only use information to deal with the complaint, or to address any systemic issues arising from the complaint
- only share personal information with officers on a 'need to know' basis
- if information about complaints is released to the public, de-identify the information before publication.

5.8 Explaining options for review

Good complaint handling systems allow people to request an internal review of their complaint outcome. Your complaint handling policy can document the process. For instance, the Victorian Ombudsman asks people to:

- submit a request for internal review within 60 days of being informed of the complaint outcome
- explain why they believe there is an error in the outcome, and include any supporting evidence.

Reviews should be conducted by senior, experienced officers who have not been involved in the matter previously. This ensures the process is as independent as possible.

In appropriate cases, you might also consider using alternative dispute resolution, such as mediation, to try to resolve the complaint.

You should inform people of any external avenues of complaint or appeal if they are dissatisfied with the outcome. These include:

- the Victorian Ombudsman
- IBAC, if the matter involves a potential breach of human rights by a Victoria Police member
- specialist bodies such as VEOHRC if the complaint concerns discrimination, the Mental Health Complaints Commissioner, the Health Complaints Commissioner
- statutory rights of appeal such as merits review at the Victorian Civil and Administrative Tribunal.

5. Responding to complaints (cont.)

Tip: referring people to the Victorian Ombudsman

We recommend the following text if you are referring someone with a complaint to the Victorian Ombudsman:

If you are unhappy with the outcome of this process, you may wish to complain to the Victorian Ombudsman by completing the online complaint form at www.ombudsman.vic.gov.au or by calling (03) 9613 6222 or 1800 806 314 in regional areas.

People can also sometimes raise their Charter rights in court when the question of whether a public authority acted unlawfully under the Charter is relevant, or the interpretation of a law consistent with human rights is a question in the case. The Attorney-General and VEOHRC have the right under the Charter to intervene or be involved in such cases.

Tip: contact the Human Rights Unit regarding Charter court cases

Contact the Human Rights Unit if your department or agency is involved in a court case that raises the Charter.

Note: The Australian Human Rights Commission can only handle human rights complaints about the actions of Commonwealth Government departments and agencies.

5.9 Learning from complaints

Best practice complaint processes embed human rights considerations into complaint practices and procedures. Where possible, you should draw on best practice to incorporate Charter considerations into your complaint procedures.

Recording and analysing your complaint information with regard to human rights issues that have been identified or raised regularly will help you identify areas where your organisation's services might need to improve.

It is useful to consider:

- the number of complaints and any trends over time
- which human rights have been identified or raised

- the types of issues or services involved
- the outcomes of the complaints
- the demographics of those who raise complaints.

It is good practice to provide quarterly reports to senior managers about complaints, along with any recommendations about how to improve services. It is also good practice to report on human rights issues in your annual report.

Case Study: accessible emergency warnings for deaf and hearing impaired people

Following the Hazelwood mine fire in 2014, there were concerns that emergency management in Victoria did not adequately consider the needs of particular people in the community who were more 'at risk' than others. This included people with disabilities. People in emergencies have the right to expect that public authorities will implement measures to protect their rights, including the right to equality, the right to life, and the right to seek and receive information (such as communication designed to protect people in emergencies).

As part of the response, Vicdeaf partnered with Emergency Management Victoria (EMV) to provide Auslan interpreting access and media updates in Auslan during emergencies. Prior to this initiative, EMV briefings and updates lacked Auslan content. This meant that many people in the deaf community had to rely on other people to access information about emergencies. EMV is now committed to providing media conferences and updates in Auslan.

2014 Report on the Operation of the Charter of Human Rights and Responsibilities

Source: VEOHRC

6. Template form – information to collect to manage complaints involving human rights

This Guide includes a template form at Appendix F for public authorities to guide and enhance existing procedures for managing complaints that might raise human rights.

The form could be incorporated as part of a checklist for departmental complaint handlers.

The form at Appendix F should be used in conjunction with the flowchart (Appendix B) and overview of the process for dealing with human rights related complaints (Appendix E).

7. Where to go for further information

If you need further information or assistance about whether the Charter is relevant to a complaint you can contact:

1. The HRU on (03) 8684 0859, or go to the Human Rights Portal, which provides information for public authorities on the Charter: <http://humanrights.vgso.vic.gov.au/>
2. VEOHRC's enquiry line on 1300 292 153 or VEOHRC's website which provides information on the Charter: <http://www.humanrightscommission.vic.gov.au/human-rights>
3. The Victorian Ombudsman on (03) 9613 6222 or 1800 806 314 in regional areas or go to the Victorian Ombudsman's website: <https://www.ombudsman.vic.gov.au/>
4. IBAC on 1300 735 135 or go to IBAC's website: <http://www.ibac.vic.gov.au/>

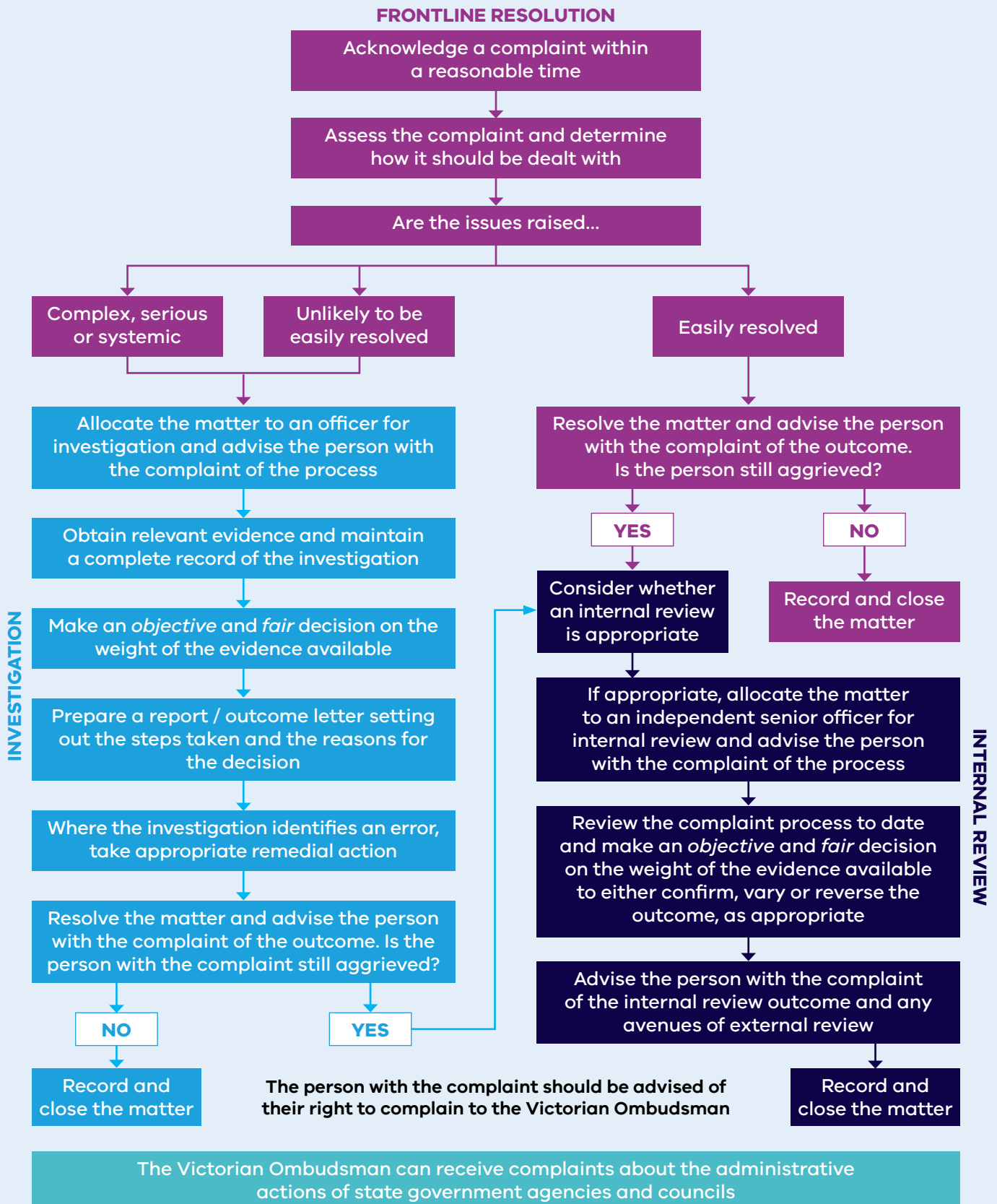
Peer networks to share learnings and insights into how to embed a human rights culture into government organisations are also encouraged. VEOHRC runs a VPS Human Rights Network, which aims to provide information, ideas and networking opportunities to public sector employees who are interested in applying human rights in their work. Members of this network receive email updates, invitations to events and resources to assist public decision-making.

If you are interested in joining the VPS Human Rights Network and helping build a human rights culture in Victoria, please see VEOHRC's website for more information: <http://www.humanrightscommission.vic.gov.au/vps-human-rights-network>

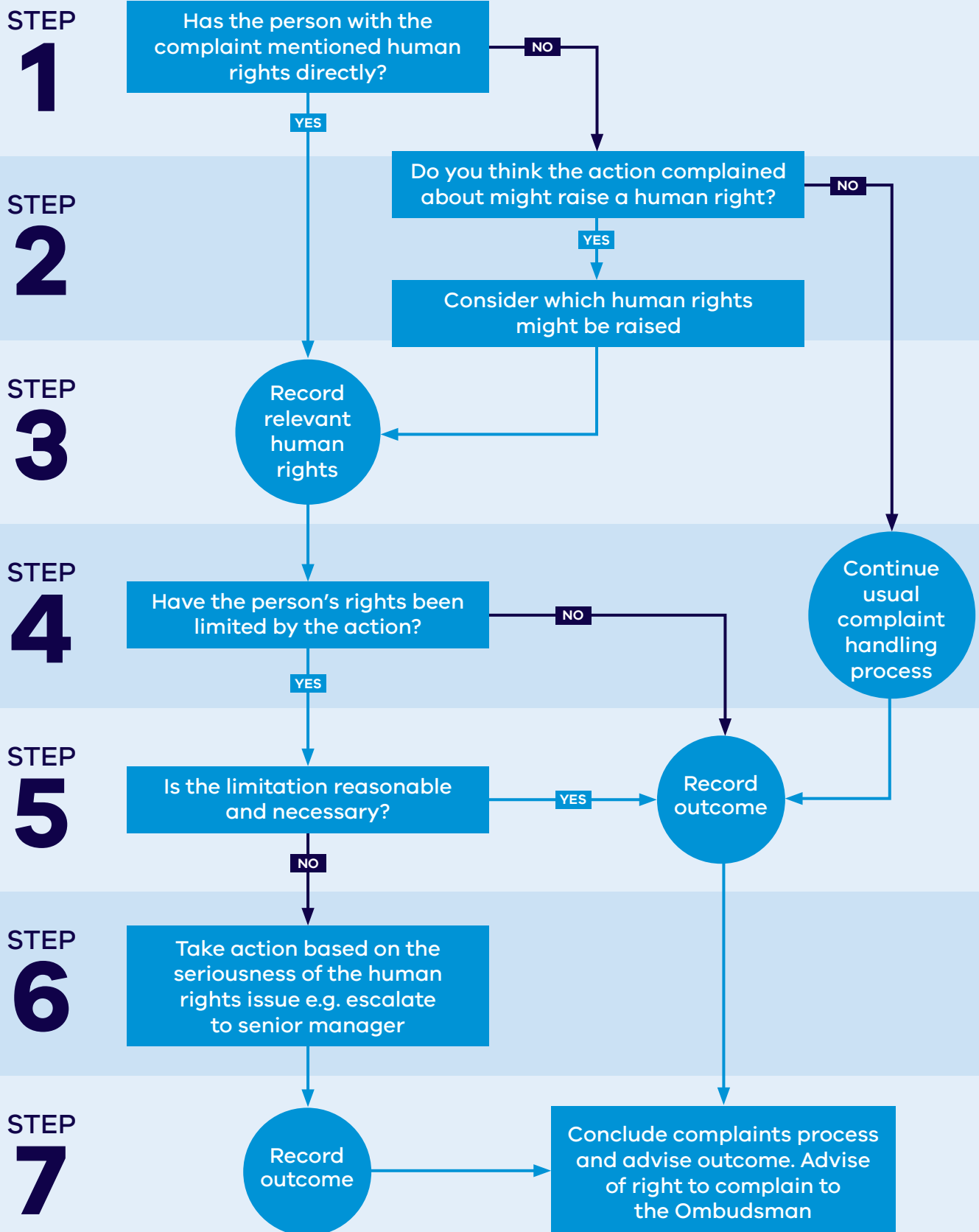
If you are interested in learning more about the Charter, or in receiving training on the Charter, you can contact the HRU or VEOHRC (see contact details above).

A: Complaints handing flowchart

This flowchart shows how a tiered approach to complaint handling can work in practice.



B: Flowchart – considering human rights issues in complaints



C: Acknowledgment letter example

This is an example of an acknowledgement letter for a complaint.

Dear Ms Citizen

Your complaint about wheelchair access to our building

Thank you for your email dated 1 January 2017 about the lack of wheelchair access to our building.

We are considering your complaint. We will contact you within X time to provide you with an update or to discuss how we can resolve your complaint.

If you have any questions, you are welcome to contact me on 9555 5555.

Yours sincerely

Li Adams
Customer Service Officer

D: Human rights triggers in public authorities' activities

Table: Human rights triggers and relevance to your work

The following table aims to prompt you to link particular human rights with your public authority's activities. The table steps through each Charter right and provides guidance on the types of activities that can have an impact on that right. It is not an exhaustive list, and is used here to provide some context for the Charter rights and the work of public authorities.

It may alert you to when a complaint might engage a human right or when your public authority might need to amend any programs, services or proposals to ensure compatibility with the Charter.

You will need to take this human right into consideration....	...if the program, service or proposal (or complaint in relation to)
<p>Recognition and equality before the law (section 8)</p>	<ul style="list-style-type: none"> • Contains measures that aim to assist people who have been socially, culturally and/or economically disadvantaged. • Takes steps to diminish or eliminate conditions that have resulted in specific groups within society being disadvantaged (positive discrimination). • Provides for the delivery of an entitlement or service to some groups but not others. • Assists or recognises the interests of Aboriginal persons or members of other ethnic groups. • Is stated in neutral terms but has a disproportionate impact on people who have one or more protected attributes under the <i>Equal Opportunity Act 2010</i> (for example, sex, disability, race, age etc). • Deals with any of the human rights set out in the Charter in a discriminatory way (for example, if the legislation curtails freedom of expression if a person has engaged in industrial activity). • Sets age bands that are expressed as protective measures, graduated entitlements (for example, driver licensing), or statements of legal capacity (for example, voting). • Establishes eligibility requirements for access to services or assistance (such as legal aid).
<p>Right to life (section 9)</p>	<ul style="list-style-type: none"> • Affects the way services are provided, or how and whether these services can be accessed (such as essential medical or welfare services) where this has a negative impact on a persons safety or health. • Impacts on the delivery of medical resources for patients. • Impacts on procedures for the management of those held in your care. • Creates or amends law, policy or practices permitting law enforcement officers to use force, including the use of weapons in the course of their duties. • Create or amends the law on suicide, assisted dying or coronial inquests.

D: Human rights triggers in public authorities' activities (cont.)

You will need to take this human right into consideration....	...if the program, service or proposal (or complaint in relation to)
Protection from cruel, inhumane or degrading treatment (section 10)	<ul style="list-style-type: none"> • Affects the physical or mental well-being of a person in a manner that might: <ul style="list-style-type: none"> » cause serious physical or mental pain or suffering, or » humiliate or degrade a person. • Creates new powers or increases existing powers of police, inspectors or authorised officers or other persons. • Removes or restricts the right to complain about service delivery. • Removes or restricts the right to complain of mistreatment by a public authority, or limits by those with a role of independent scrutiny to places of detention. • Affects the conditions attached to all forms of State care and detention (including access to goods and services, such as medical treatment, while in detention). • Creates new types of penalties (including mandatory minimum sentences, and limits to or denial of a service). • Authorises changes to rules of evidence or procedure that would allow for evidence obtained as a result of torture, inhuman or degrading treatment, to be used in courts or tribunals. • Authorises a person to be searched or puts in place procedures for conducting searches. • Regulates the treatment of persons located at any site for which a public authority is responsible (including a public hospital, an approved mental health service, a prison, a government school, a disability or aged care service, and supported residential service). • Allows for prolonged periods of segregation or other particularly harsh prison regimes. • Involves crisis intervention strategies or behavioural management plans that include the use of seclusion, chemical restraint and/or physical restraint. • Defines and regulates procedures for obtaining consent to medical treatment and experiments. • Regulates medical treatment of persons without their consent. • Regulates the conduct of medical or scientific research.
Freedom from forced work (section 11)	<ul style="list-style-type: none"> • Compels the provision of any labour or the performance of any service under threat of a penalty. • Gives a minister or public authority the power to employ or direct people to perform work in a vital industry or during a state of emergency.

You will need to take this human right into consideration....

...if the program, service or proposal (or complaint in relation to)

Freedom of movement (section 12)

- Limits the ability of a person to choose where to live in Victoria.
- Allows for an intervention order against a person, or enables their detention.
- Proposes surveillance of a person.
- Compels someone to attend a court or other similar body to provide information.

Protection of privacy and reputation (section 13)

- Involves collection and/or publication of personal information and how that information is accessed, used or shared.
- Involves surveillance of persons for any purpose (such as closed-circuit television, CCTV).
- Involves powers of entry, search, seizure, confiscation or forfeiture.
- Allows publication of personal information (for example, results of surveillance, medical tests, electoral roll).
- Provides for a compulsory physical intervention on a person such as a DNA, blood, breath or urine test, or forced medical examination.
- Provides for treatment or testing of a patient without his or her consent.
- Involves a professional duty of confidentiality.
- Changes or creates any confidentiality provisions or secrecy provisions relating to personal information.
- Provides for mandatory disclosure or reporting of information (including disclosure of convictions, injury or illness).
- Regulates a person's name, private sexual behaviour, sexual orientation or gender identification.
- Involves the interception, censorship, monitoring or other regulation of postal articles and all other communications.
- Relates to handling personal information for research or statistics.
- Recognises or fails to give legal recognition to close or enduring personal relationships.
- Provides for the removal of children from a family unit or a family intervention order.
- Regulates tenancy or eviction.
- Regulates a state-run care facility or mental health service.
- Regulates standards, consultation and procedures operating in respect of public housing.

D: Human rights triggers in public authorities' activities (cont.)

You will need to take this human right into consideration....	...if the program, service or proposal (or complaint in relation to)
Freedom of thought, conscience, religion and belief (section 14)	<ul style="list-style-type: none"> • Promotes, restricts or interferes with a particular religion or set of beliefs. • Requires a person to disclose his or her religion or belief. • Affects a person's ability to adhere to his or her religion or belief. • Impinges upon or disadvantages a person because of the person's opinions, thoughts or beliefs. • Attempts to regulate conduct that will affect some aspect of a person's worship, observance, practice or teaching of his or her religion or belief. • Subjects conduct that is required or encouraged by a person's religion or beliefs to criminal penalties or fines. • Restricts the capacity for those under state control (for example, prisoners) to comply with the requirements of their religion. • Compels certain acts that may be inconsistent with a religion or set of beliefs. • Restricts the capacity for those in your care or control to comply with the requirements of their religion. • Sets dress codes (possibly for safety or hygiene reasons) that do not accommodate religious dress. • Imposes requirements as a condition of receiving a benefit that prevents a person from adhering to his or her religion or belief. • Requires students to learn about particular religions or beliefs or to be taught materials that might have the effect of undermining their religious beliefs.
Freedom of expression (section 15)	<ul style="list-style-type: none"> • Regulates the format of any public expression (for example, the content of a speech, publication, broadcast, display or promotion). • Censors materials or requires that they be reviewed or approved before being published. • Compels someone to provide information. • Imposes a dress code. • Regulates or restricts a person's access to information (including access to material on the internet).
Peaceful assembly and freedom of association (section 16)	<ul style="list-style-type: none"> • Limits the ability of a person or group of people to exercise their right to peacefully protest or to come together for a common purpose. • Treats people differently on the basis of their membership of a group or association. • Creates disincentives or confers preferences for membership in a group or association (including a disclosure requirement).

You will need to take this human right into consideration....	...if the program, service or proposal (or complaint in relation to)
<p>Protection of families and children (section 17)</p>	<ul style="list-style-type: none"> • Affects the ability of people to form and maintain close or enduring personal relationships or fails to give legal recognition to these relationships. • Regulates the obligations of family members towards each other, including parents and guardians towards children. • Provides for the separation and removal of children from parents or guardians or other adults responsible for their care. • Regulates family contact for those in State care or enables intervention orders to be granted between family members. • Affects the welfare of children within the family or State care. • Regulates family contact of prisoners or others in involuntary State care. • Creates a regime for giving children access to information about biological parents when the child has been adopted or born using assisted reproductive technology. • Deals with the division of a person’s estate when they die.
<p>Entitlement to participate in public life (section 18)</p>	<ul style="list-style-type: none"> • Limits the ability to take part in municipal and parliamentary elections. • Requires people to meet certain conditions in order to be eligible to participate in municipal and parliamentary elections. • Regulates how people vote in elections (for example, the method of voting). • Regulates access to employment in the public service or appointment to public office. • Establishes requirements for membership of public bodies. • Regulates the conduct of elections and the electoral process. • Regulates the suspension and conduct of local government. • Regulates the suspension and removal of statutory office holders.

D: Human rights triggers in public authorities' activities (cont.)

You will need to take this human right into consideration....	...if the program, service or proposal (or complaint in relation to)
Cultural rights (section 19)	<ul style="list-style-type: none"> • Limits the observance of any religious practices. • Restricts the capacity for persons to declare or make public their affiliation to a particular racial, religious or cultural group. • Limits or prohibits communication in languages other than English, including through the provision of information. • Prevents people using their language in community with others. • Limits the ability of Aboriginal persons or members of an ethnic group to take part in a cultural practice, or otherwise interferes with their distinct cultural practices. • Restricts the provision of services or trade on religious holidays. • Regulates cultural or religious practices around the provision of secular public education. • May interfere with the relationship between Aboriginal people and land, water and resources. • Imposes or coerces people to do something that interferes with their distinct cultural practices, for example, wear clothes that differ from their traditional cultural attire. • Regulates traditional medical practices. • Licenses or provides a restriction on the preparation and serving of food.
Property rights (section 20)	<ul style="list-style-type: none"> • Provides for acquisition, seizure or forfeiture of a person's property under civil or criminal law. • Confers on a public authority a right of access to private property. • Limits or terminates property rights (for example, by legislation which establishes a limitation period). • Restricts the use of private property (for example, under planning laws). • Restricts or regulates established patterns of access (especially for commercial or business purposes) to public property. • Implements government control over its own property (for example, resumption of land). • Impounds or suspends registration of a motor vehicle.

You will need to take this human right into consideration....	...if the program, service or proposal (or complaint in relation to)
Right to liberty and security (section 21)	<ul style="list-style-type: none"> • Grants a power of arrest. • Authorises a person with a mental illness to be detained for treatment in a mental health facility. • Provides for the interim detention of a person whether or not he or she is suspected of committing an offence (for example, to prevent the spread of a contagious disease, or enable a person to 'sober up'). • Relates to the management of security of anyone in your care, particularly those in involuntary care. • Makes it an offence for a person to fail to remain at a place (for example, for further questioning or to conduct a search or test by a police officer or other official). • Allows for the segregating of an area and to control movement within that area.
Humane treatment when deprived of liberty (section 22)	<ul style="list-style-type: none"> • Enables you to detain people or relates to the conditions under which a person may be detained. • Concerns standards and procedures for treatment of those who are detained (for example, use of force, dietary choice, access to private shower and toilet facilities). • Authorises a person to be held in a place with limited facilities or services for the care and safety of detainees. • Enables enforcement officers to undertake personal searches of those people detained in custody or detainee visitors.
Children in the criminal process (section 23)	<ul style="list-style-type: none"> • Enables you to detain children for any length of time. • Authorises you to hold children in amenities that have limited facilities or services for the care and safety of children. • Enables you to undertake personal searches of a detained child. • Impacts on the environmental design of detention centres or conditions under which children are detained. • Establishes or alters programs in prisons, youth training centres or residential centres. • Affects the speed at which a child may be brought to trial. • Creates or amends procedures and the law of evidence applicable to children charged with criminal offences, including the investigation and prosecution of offences. • Amends the law relating to children in criminal proceedings, including bail, adjournments, and sentencing.

D: Human rights triggers in public authorities' activities (cont.)

You will need to take this human right into consideration....	...if the program, service or proposal (or complaint in relation to)
<p>A fair hearing (section 24)</p>	<ul style="list-style-type: none"> • Creates or restricts review of administrative decision-making and appeals processes, or raises other procedural fairness issues. • Reverses the onus of proof. • Amends the way in which evidence is collected and presented. • Regulates the procedures for challenging the impartiality and independence of courts and tribunals.
<p>Rights in criminal proceedings (section 25)</p>	<ul style="list-style-type: none"> • Impacts on the right to be presumed innocent (including amendments to the law relating to self-incrimination). • Impacts on the bringing of disciplinary actions. • Impacts on the treatment of children in complaint and disciplinary proceedings. • Establishes time limits on the lodging of complaints or appeals. • Regulates the procedures for investigation and prosecution of offences. • Establishes guidelines or procedures for the provision of assistants, translators and interpreters. • Amends any guidelines or procedures enabling the accused to represent themselves personally or restricts the right of an accused to choose a support person or advisor of their choice. • Deals with the admissibility of evidence. • Restricts access to information and material to be used as evidence. • Creates or amends an offence that contains a presumption of fact or law and puts the legal or evidential burden on the accused to rebut the presumption. • Alters the criteria or conditions under which a person may apply for or be released on bail. • Amends or alters procedures under which a person is able to appeal against or review a decision. • Amends the eligibility criteria for legal aid.
<p>Right not to be tried or punished more than once (section 26)</p>	<ul style="list-style-type: none"> • Allows a person to be punished a second time for the same offence. • Applies more severe penalties for conduct by a person than those that existed at the time the conduct was undertaken. • Amends any criminal procedure rules relating to previous convictions and acquittals. • Creates an overlap between an offence in regulations and an offence in the primary Act.
<p>Retrospective criminal laws (section 27)</p>	<ul style="list-style-type: none"> • Seeks to sanction a person for conduct that was not contrary to law at the time the conduct was undertaken. • Fails to apply less severe penalties for conduct by a person if penalties have decreased since the conduct was undertaken.

E: Process for dealing with human rights complaints

Questions to consider when receiving a complaint		Assessment to make	Action
1	Has the person mentioned human rights directly?	Yes	If yes, record and proceed to question 2.
		No	Proceed to question 3.
2	If yes, which human rights do they mention?	For example, privacy rights.	Record specific rights and action and proceed to question 4.
3	If no human rights are mentioned by the person with the complaint, do you think the decision or action complained about might still engage a human right? Refer to Part 5.3 of the Guide and Appendix D for guidance.	Yes. Which human right(s) is engaged? For example, privacy and property rights.	Record specific rights and proceed to question 4.
		Maybe	Conduct an assessment using the information provided in the Guide (see Part 5.3) and come to a conclusion either Yes/No.
		No	Proceed with the handling of the complaint in accordance with your department's policies and procedures.
4	Has the right(s) been limited? Refer to Part 5.4 of the Guide.	Yes	Record the nature of the limitation and proceed to question 5.
		No	Record reasoning as to why the right(s) is not limited. Proceed with the handling of the complaint in accordance with your organisation's policies and procedures.
5	Is the limitation on the right(s) reasonable and necessary? Refer to Part 5.5 of the Guide.	Yes	Record reasoning as to why the limitation on the right(s) is reasonable and necessary. Proceed with the handling of the complaint in accordance with your organisation's policies and procedures.
		No	Record reasoning as to why the limitation on the right(s) is not reasonable and necessary, and proceed to question 6. Inform the person of their right to contact the Victorian Ombudsman.

E: Process for dealing with human rights complaints (cont.)

Questions to consider when receiving a complaint	Assessment to make	Action
<p>6 If human rights are engaged by the administrative action, the rights are limited and the limitation is not reasonable and necessary, then you must determine:</p> <ul style="list-style-type: none"> • the seriousness of the human rights issue • any action to be taken. <p>On the basis of the assessment, how serious is the human rights issue and what action should you take?</p>	<p>Obtain sufficient information to make assessment.</p> <p>Discuss with manager whether further investigation is required. Following discussion, consider taking one of the following actions, for example:</p> <ul style="list-style-type: none"> • resolving the complaint internally e.g. an apology or escalate to a senior manager • advising the person to contact the Victorian Ombudsman, VEOHRC or other relevant body • referring to other authority as appropriate, for example, VEOHRC, or the Independent Broad-based Anti-corruption Commission (IBAC) for complaints about police. 	<p>Record your assessment of the seriousness of human rights issue and the action taken, for instance, an apology or referral made to other agency or body. Inform the person of their right to contact the Ombudsman (if you have not already done so).</p>
<p>7 Has the person been made aware of their right to complain to the Ombudsman or IBAC (for complaints about police)?</p>	<p>Consider whether the person has (at any stage) been made aware of their right to complain to the Ombudsman or IBAC (for complaints about police).</p>	<p>Inform the person of their right to make a complaint to the Ombudsman or IBAC (for complaints about police).</p>

F: Template form – information to collect to manage complaints involving human rights

Part 1: Background information

Name and contact details of the person making complaint

Who or what is the complaint about?

What decision or action by that person(s) organisation brought about the complaint?

When and where did the event or incident occur? Provide details of the event(s), where possible.

What action has (or has not) been taken by your organisation since the complaint was made?
Please identify each instance.

Are there any other parties to the incident or action? Provide as much information as possible of any other parties. (Consider whether there are any privacy issues)

F: Template form – complaints involving human rights (cont.)

Part 2: Human rights analysis

Which of the person's human right(s) have been engaged?

Has the person's human right(s) been limited by the decision or action of your organisation?
If so, how?

If the person's human right(s) have been limited, is the limitation imposed by your organisation's
action reasonable and necessary?

What is your evidence to support this?

Is there another reasonable way of achieving the objective that is less restrictive of the person's
human rights?

Which laws and policies are relevant to the situation? Is your organisation legally required to act in a
particular way, or is it exercising a discretion?

Part 3: Impact on the person with the complaint

What outcome is the person with the complaint seeking? Provide this information if known.

What has been the effect on the person with the complaint?

What action has been taken by your organisation to try to resolve the issue?

Are others affected by this situation? Could a group or class of people be affected? If so, provide details.

Part 4: Proposed action

What are the proposed or possible next steps to help resolve the complaint?

Does the situation affect a broader group of people? If so, how does your organisation plan to investigate this or consult with those people?

Part 5: Inform the person with the complaint of the Victorian Ombudsman and other relevant agencies

Have you informed the person with the complaint of the right to make a complaint to the Victorian Ombudsman or to contact other agencies, such as VEOHRC, or IBAC for complaints about police?



Justice
and Regulation

VICTORIAN
ombudsman



Victorian Equal Opportunity
& Human Rights Commission



independent broad-based
anti-corruption commission

Victoria