



**Victorian Equal Opportunity  
& Human Rights Commission**

# **2023 report on the operation of the Charter of Human Rights and Responsibilities**

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**Victorian Equal Opportunity  
& Human Rights Commission**

# **2023 report on the operation of the Charter of Human Rights and Responsibilities**





# From the Commissioner



8 August 2024

Dear Attorney-General

On behalf of the Victorian Equal Opportunity and Human Rights Commission (the Commission), I am pleased to present our report on the operation of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter) for the 2023 calendar year.

In accordance with section 41(a)(i) of the Charter, this report examines the operation of the Charter. I note that during 2023, the Supreme Court of Victoria did not make any declarations of inconsistent interpretation. Accordingly, it has not been necessary for this report to examine matters under section 41(a)(ii) of the Charter. In reference to section 41(a)(iii) of the Charter, I note one override declaration was made for the *Corrections Amendment (Parole Reform) Act 2023* (Vic).

Human rights protections have never been more important for people in Victoria.

Global and local socioeconomic and political events contributed to human rights challenges in 2023. The cost-of-living crisis resulting from the COVID-19 pandemic has impacted many of our most marginalised communities, with an increasingly competitive rental market reducing access to affordable accommodation. Conflicts overseas have also led to increased hate speech on our streets and online, and discrimination in our workplaces. And the results of the federal referendum on a Voice to Parliament showed that there has never been a more important time to solidify First Peoples' rights.

In light of these challenges, the Charter continues to provide the foundation for a fair, safe and inclusive Victoria where every person is respected and treated with dignity.

In this report, we outline how the Charter has been used across the three arms of government in 2023. This report showcases examples of how government departments and agencies at the forefront of service-delivery and human rights decision-making are building their Charter capability to positively impact the rights of people in Victoria. It also demonstrates how parliament has considered the Charter in 2023 when passing laws, as well as how courts and tribunals have used the Charter to improve outcomes for individuals interacting with the justice system.

Momentum for an Australian Human Rights Act is building, with the federal Parliamentary Joint Committee on Human Rights examining a suitable model in its Inquiry into Australia's National Human Rights Framework. Lessons from the operation of the Victorian Charter are increasingly relevant for this national process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ro Allen', written in a cursive style.

**Ro Allen**

**Victorian Equal Opportunity and Human Rights Commissioner**



# Acknowledgements

The Victorian Equal Opportunity and Human Rights Commission acknowledges the First Peoples of Victoria and their ongoing strength in upholding some of the world's oldest living cultures.

We acknowledge the Traditional Custodians of the lands throughout what is now Victoria, where we live and work, and pay our respects to their Elders, past and present.

Traditional Custodians maintain that their sovereignty has never been ceded. We support a Treaty with Victoria's First Peoples. The strength, resilience and pride of First Peoples, and their cultures, communities and identities, continue to grow and thrive today, despite the impact of colonisation and ongoing experiences of racism.











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**1**

# **Victoria's human rights framework**

# Victoria's human rights framework

**Human rights are a basic entitlement of everybody, no matter where they live, what they look like or what they believe.**

In 2006, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter) enshrined 20 civil, political and cultural rights into Victorian law. These rights reflect the fundamental values of freedom, equality, respect and dignity. These values are vital for our wellbeing and our ability to live a dignified life where we are treated fairly and can genuinely make choices in our daily lives.

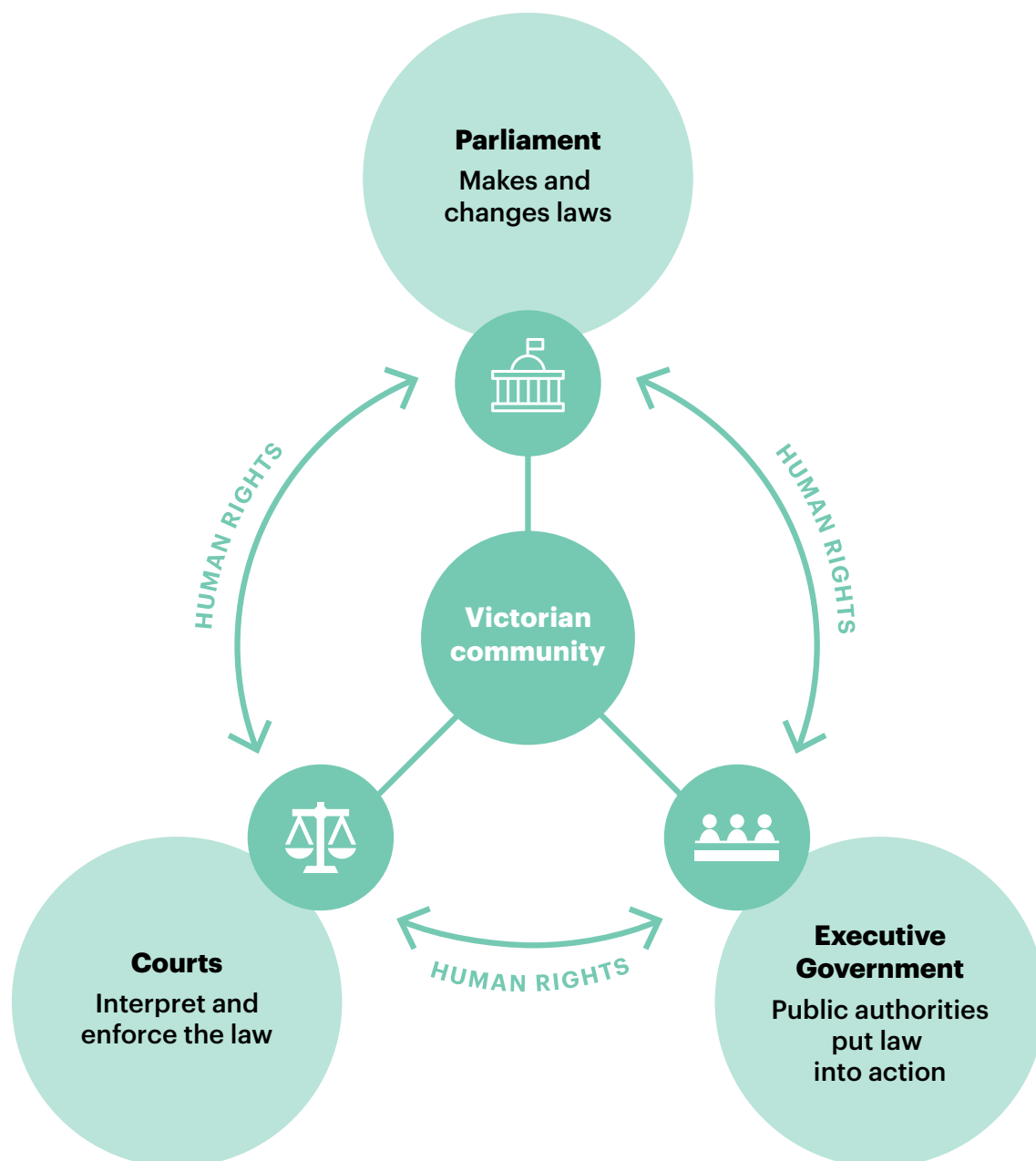




# The Charter's dialogue model of rights

The Charter creates a 'dialogue model' of rights – a constructive and continuous conversation about human rights – between public authorities, the parliament, the courts and the Victorian community. The model is designed to ensure human rights are considered in the development of laws and policies, in the delivery of public services, and in government decision-making. It encourages each part of our democratic system to play a role in protecting and promoting human rights.

Figure 1: The Charter's dialogue model of rights



# Charter rights

Human rights protected by the Charter	
<b>Section 8</b>	The right to recognition and equality before the law
<b>Section 9</b>	The right to life
<b>Section 10</b>	The right to protection from torture and cruel, inhuman or degrading treatment
<b>Section 11</b>	The right to freedom from forced work
<b>Section 12</b>	The right to freedom of movement
<b>Section 13</b>	The right to privacy and reputation
<b>Section 14</b>	The right to freedom of thought, conscience, religion and belief
<b>Section 15</b>	The right to freedom of expression
<b>Section 16</b>	The right to peaceful assembly and freedom of association
<b>Section 17</b>	The right to protection of families and children
<b>Section 18</b>	The right to take part in public life
<b>Section 19</b>	Cultural rights, including Aboriginal cultural rights
<b>Section 20</b>	Property rights
<b>Section 21</b>	The right to liberty and security of person
<b>Section 22</b>	The right to humane treatment when deprived of liberty
<b>Section 23</b>	Rights of children in the criminal process
<b>Section 24</b>	The right to a fair hearing
<b>Section 25</b>	Rights in criminal proceedings
<b>Section 26</b>	The right not to be tried or punished more than once
<b>Section 27</b>	Retrospective criminal laws



# Charter responsibilities

The Charter places responsibilities on the three arms of government – the parliament, courts and tribunals, and public authorities – to uphold human rights. It encourages each part of our democratic system to play a role in protecting and promoting human rights. While each arm of government is subject to checks and balances, ultimate sovereignty rests with the parliament.

	<p><b>Parliament of Victoria</b></p> <p>The Parliament of Victoria must assess all new laws to see whether they are consistent with human rights. Parliament must explain which human rights a law has an impact on, if any, and how the anticipated impact on human rights is reasonable and justified.</p>
	<p><b>Courts and tribunals</b></p> <p>Courts and tribunals must interpret Victorian laws to uphold human rights to the extent it is possible while maintaining consistency with the purpose of the law.</p>
	<p><b>Public authorities</b></p> <p>Public sector workers, government departments, local government, ministers and police must take human rights into account in their day-to-day work. They must act compatibly with human rights and consider human rights before making decisions. If a public authority fails to do so, then a claim for a breach of the Charter may be able to be brought alongside another legal claim.</p>



**2**

# **The operation of the Charter in 2023**



# 2.1 The Charter in public authorities

## Charter education

To assist public authorities to comply with their obligations under the Charter and build a human rights culture in the Victorian public sector, the Commission's Charter Education Program (CEP) delivers tailored education across government departments, agencies, statutory authorities and functional public authorities. CEP's eLearning modules, resources and services are designed in partnership with public authorities, enabling the content to incorporate realistic workplace scenarios to support skill development for public sector staff to apply the Charter in day-to-day decision-making.

In 2022–23, CEP was designed around 3 key pillars – leadership, capability and connectivity. The program comprised:

- executive briefings – targeting senior public sector staff to support leadership on Charter compliance
- general sessions – targeting human rights 'hotspots' across the Victorian public sector
- Charter Capability Program (CCP) – an intensive 4–5 part iterative program focusing on capability development and action planning
- a suite of e-learning modules – introducing public sector staff to the Charter and their obligations to properly consider and act compatibly with human rights in their work.

In 2023, the Commission delivered 67 human rights education sessions to 977 participants located in diverse public sector departments and agencies. In addition, public sector staff completed 7,080 Charter e-learning modules.



# Case studies

## First Peoples Self-Determination Division of the Department of Energy, Environment and Climate Action

In 2023, the Commission delivered the CCP to staff working in the First Peoples Self-Determination division at the Department of Energy, Environment and Climate Action (DEECA). This CCP consisted of 4 comprehensive modules, concentrating on section 19(2) of the Charter to provide specific and nuanced understanding and skills necessary for DEECA staff to promote and protect the rights of First Peoples communities in Victoria.

This knowledge is essential for fostering meaningful and respectful collaboration between DEECA staff and Traditional Custodian groups, ensuring that policies and initiatives undertaken by the department align with the principles of self-determination and First Peoples cultural rights.

**‘Really useful to have the training well-targeted towards our work – thank you for that. Previously, the Charter has seemed somewhat distant to our work, so this really helped it bring it into focus.’**

**– Human rights training participant**

**‘The session helped put all the parts together, especially when it comes to Aboriginal cultural rights and demonstrate the use of the Charter in practice as well as in broader policy making.’**

**– Human rights training participant**



# Victoria Police

Following delivery of the first pilot CCP in April 2021 targeting the Western region of Victoria Police, the Commission delivered a further 3 intensive CCPs to the Southern, Eastern and Northwest Metro regions of Victoria Police in 2023.

The CCPs provided a unique opportunity for 116 sergeants and senior sergeants to engage in a human rights program tailored to the policing context, which enhanced the confidence and capability of sworn members to promote and protect human rights when exercising their duties.

The programs focused on supporting members to make Charter-compliant decisions and minimise the risk of human rights breaches. Participants practised applying the Charter to a range of workplace scenarios (tailored to region-specific human rights issues) and identified entry points for embedding human rights into day-to-day police decision-making. Post-program data indicated that members felt more significantly more confident applying the Charter as a result of their participation in the program, and there was also an increase in the number of members taking active steps to properly consider and act compatibly with human rights.

Senior leaders joining this program were expected to not only improve their own Charter compliance but monitor and support an uplift in human rights practice across their teams. Human rights action plans were developed at the station level to guide local practice and strengthen the focus on human rights. All senior sergeants and sergeants participating in this program indicated their full commitment to implement their action plans and support the work of their teams.

**‘This was an excellent program which for me highlighted many opportunities for improvement both personally and within my workplace.’**

**– Human rights training participant**

**‘Applying a [human rights] lens is so important in our daily duties, and the opportunity to apply what we learnt by looking at different scenarios allowed us all to think outside the square, whilst hearing different perspectives/thoughts. I will look at and apply a [human rights] lens with more confidence and I look forward to teaching those around me.’**

**– Human rights training participant**

**‘I am more confident than before I did this program. Hearing others being confused about some aspects to the legislation as well, but also the clarification and challenging by presenters to get me thinking outside the box.’**

**– Human rights training participant**

# Department of Families, Fairness and Housing

Following an executive briefing to the executive leadership team at the Department of Families, Fairness and Housing, two distinct Charter education training programs were delivered to enhance the capabilities of the Legal Service branch and the Aboriginal Housing unit within Homes Victoria. The training sessions focused on reinforcing compliance with the Charter and emphasising its crucial role in shaping policies related to public, community and social housing. The programs explored the Charter's role as a pivotal tool for decision-making, showcasing its potential to significantly enhance the accountability, consistency and fairness of housing-related choices.

A particular emphasis was placed on the relevance of section 19(2) of the Charter, addressing Aboriginal cultural rights. This specific focus aimed to deepen understanding within the Legal Service branch and the Aboriginal Housing unit about the importance of incorporating cultural considerations into housing policy and practices. By doing so, the training sought to develop inclusive and culturally sensitive approaches, aligning Homes Victoria with core human rights principles of equity, dignity and respect in the delivery of housing services.

**'The history of human rights and the Charter was really great to have and necessary for context. Scenarios were spot on.'**

**– Human rights training participant**

**'Learning about what it actually means to act compatibly with human rights as well as what proper consideration of human rights means was valuable. The fact that the session was tailored to our teams was extremely beneficial.'**

**– Human rights training participant**

# Looking ahead

Our focus for the next iteration of the CEP in 2024–25 will be to continue the focus on leadership and capability as well as greater investment in digital education to ensure the accessibility, flexibility and reach of our education products.





## 2.2 Human rights in law-making

The Charter requires all bills introduced in the Victorian Parliament to be accompanied by a statement of compatibility. This considers human rights that may be impacted by a proposed bill and whether limitations on rights may be reasonable and justified.

The Scrutiny of Acts and Regulations Committee (SARC) assesses and reports on whether bills introduced into parliament are compatible with human rights. SARC also writes to ministers and members with questions about human rights relevant to bills. Members of Parliament can read the reports, which can facilitate dialogue regarding the Charter between SARC and parliamentarians, allowing concerns about human rights to be considered in parliamentary debate.

### Legislative activity

Bills introduced into parliament	62
Questions about rights referred to a member or minister by SARC	20
Responses received by SARC from a member or minister	13
Public submissions made to SARC	1
Questions about rights referred to parliament by SARC	2
Statements of incompatibility or partial incompatibility	1
Override declarations	1





# Key Charter bills in 2023

## Case studies

**Warning to Aboriginal and Torres Strait Islander readers:**  
**This case study includes the name of a deceased First Nations person. Her name is used with the permission of her family.**

### ***Bail Amendment Act 2023***

In August 2023, the Victorian Government introduced the *Bail Amendment Act 2023* (the Amendment Act) aiming to refine the tests for bail, reduce remand of people accused of low-level offences and address incarceration of First Peoples, particularly women.<sup>1</sup> After changes to the *Bail Act 1977* (Vic) were introduced in 2018 in response to the 2017 Bourke Street attack, the rate at which First Peoples women were imprisoned almost doubled.<sup>2</sup> The government acknowledged that these changes disproportionately impacted people who were already experiencing disadvantage and were at least partially responsible for the remand of people accused of minor offences who posed no or little risk to the community if released on bail.<sup>3</sup> This was because people accused of repeat lower-level offences faced the same tough bail tests as those charged with the most serious offences such as murder.<sup>4</sup>

The discriminatory impact on First Peoples was highlighted in the coronial inquest into the passing of Veronica Nelson.<sup>5</sup> Veronica was a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman who passed away in custody at Dame Phyllis Frost Centre on 2 January 2020, having been refused bail for low-level offences.<sup>6</sup> The coroner found that aspects of the ‘reverse onus’ regime – which, in certain circumstances, requires bail to be refused unless the accused person can satisfy the decision-maker that there are exceptional circumstances or compelling reasons justifying bail – were incompatible with the Charter.<sup>7</sup>

The Amendment Act narrows the circumstances in which a reverse onus test applies to bail decisions and removes two bail offences.<sup>8</sup> Under the Amendment Act, the reverse onus test will not apply where the circumstances of the offending (for example, the offence was alleged to have occurred while the accused was on bail) are the sole reason that a reverse onus test was to apply. Reverse onus tests continue to apply to the existing range of serious offences and the offence of failure to answer bail.

The Amendment Act also:

- narrows the ‘unacceptable risk’ test to prevent an accused from being remanded solely due to a risk of non-violent offending on bail
- strengthens considerations that must be taken into account when making a bail decision in relation to a First Peoples or child accused
- prohibits remand in the first instance for a range of minor summary offences
- allows an accused to make a second legally represented application for bail in all cases.



According to the statement of compatibility, the Amendment Act will reduce the impact of the Act on Charter rights – for example, by narrowing the application of reverse onus tests so that refusal to grant bail will not be arbitrary for the purpose of section 21(2).<sup>9</sup>

The Victorian Aboriginal Legal Service (VALS) acknowledged that the reforms were a step forward but continues to advocate for stronger bail reform, referred to as *Pocum's Law*, so remand is only used as a last resort.<sup>10</sup>

The Amendment Act commenced on 25 March 2024.

## **Victoria's fourth override of the Charter – Corrections Amendment (Parole Reform) Act 2023**

The Charter permits Parliament to declare that a law or part of a law has effect despite being incompatible with human rights.<sup>11</sup> This is known as an 'override declaration'. Parliament's intention is that an override declaration is only made in exceptional circumstances where it will serve the public's best interests.<sup>12</sup> The override declaration signals to courts, public authorities and the community that the legislation does not have to be interpreted in accordance with the Charter.<sup>13</sup> In November 2023, the Victorian Government tabled its fourth override of the Charter. The Act amends the *Corrections Act 1986* (Vic) to restrict access to parole for Paul Denyer in a similar manner to previous overrides involving Julian Knight and Dr Craig Minogue.<sup>14</sup>

The Act also provides for a regime to apply to 'restricted prisoners' allowing for limited access to parole for people serving a sentence of life imprisonment for certain categories of murder.<sup>15</sup> This will give the Adult Parole Board discretion to make a restricted prisoner declaration – that a restricted prisoner is not eligible for parole for a specified period between 5 and 10 years (unless they are dying or incapacitated and incapable of harming anyone) if the board is satisfied that it is in the public interest. The Adult Parole Board will also set a 'no return period' of up to 5 years during which someone serving a sentence of life imprisonment for which a non-parole period has been set cannot be granted parole after parole is refused unless the person is dying or incapacitated and incapable of harming anyone.

The statement of compatibility acknowledged that the limitations on the protection against cruel, inhuman and degrading treatment (s 10(b)) and the right to humane treatment when deprived of liberty (s 22(1)) in the Charter cannot be justified under section 7(2) of the Charter and are therefore incompatible with human rights.<sup>16</sup>

SARC observed that in contrast to Victoria, Queensland's parole board is bound to act compatibly with, and give proper consideration to, human rights. In Queensland, a person who may be subject to a restricted prisoner declaration must be notified and allowed to make a submission, and the parole board reviews that submission.<sup>17</sup>

Legislation	Summary	Consideration of human rights by parliament and SARC
<b><i>Bail Amendment Act 2023</i></b>	<p>The Act introduces a suite of changes to the <i>Bail Act 1977</i> to reduce the over-representation of vulnerable groups in the justice system, including women, First Peoples and children. These reforms are intended to address the disproportionate impact the 2018 changes to bail laws had on people already experiencing significant disadvantage.</p> <p>The Act refines the bail tests to focus on serious alleged offending and serious risk, and repeals two bail offences (contravening a conduct condition of bail and committing an indictable offence while on bail). It also updates the specific considerations that must be taken into account when making bail determinations in relation to First Peoples adults and children.</p> <p>The amendments aim to balance the right to liberty in section 21(2) of the Charter against the safety of the community and protection from serious criminal offending. The legislation will maintain the reverse onus tests for certain serious offences.</p>	<p>SARC observed that the Act may require a bail decision maker to detain a child charged with certain offences, unless a child can show that exceptional circumstances apply. SARC stated that it would write to the minister seeking information regarding the Charter compatibility of this test with the right of children to protection of their best interests and to a criminal charge procedure that takes account of their age (SARC Alert Digest No 10 of 2023, 4–5).</p> <p>The ministerial response noted that the reverse onus test will continue to apply to a child accused of specified serious offences. The Supreme Court has held that the test can be applied more flexibly for a child – circumstances that may not be ‘exceptional’ for an adult may be for a child (SARC Alert Digest No. 11 of 2023, 21, 22).</p> <p>Note that SARC’s comments relate to the proposed reforms to child bail tests that did not ultimately proceed, following House Amendments in the Legislative Council.</p>
<b>Charter of Human Rights and Responsibilities Amendment (Protection from Torture and Slavery) Bill 2023</b>	<p>This Bill, introduced by Mr David Limbrick of the Libertarian Party as a private member’s Bill, seeks to enshrine certain Charter rights as non-derogable, including:</p> <ul style="list-style-type: none"> <li>• the right to life (s 9)</li> <li>• protection from torture and cruel, inhuman, or degrading treatment (s 10)</li> <li>• freedom from forced work (s 11).</li> </ul> <p>It would also require members and SARC to declare instances where non-derogable rights are engaged by bills within their statement of compatibility, human rights certificates and SARC reports.</p> <p>This Bill also seeks to repeal the Charter override provision.</p>	<p>SARC observed that the Bill may restrict legal limits on the rights to life, protection from cruel, inhuman or degrading treatment and freedom from forced work, unless a Bill seeking to do so is accompanied by a declaration of limit of a non-derogable right. SARC sought further information regarding whether this requirement would apply to existing enactments and things done under them (SARC Alert Digest 14 of 2023, 6–7).</p> <p>The member’s response has not yet been circulated in an Alert Digest.</p>

Legislation	Summary	Consideration of human rights by parliament and SARC
<b><i>Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023</i></b>	<p>The Act aims to promote Aboriginal cultural rights in s 19(2) of the Charter by amending legislation around children's health and wellbeing to include an Aboriginal Statement of Recognition to advance Aboriginal self-determination in Victoria's health and wellbeing services.</p> <p>It sets out binding principles to guide child protection decision-making, and 'placement principles' for Aboriginal children. It empowers the Commission for Children and Young People to advocate on behalf of young people in care and expands the role of Aboriginal agencies to intervene in children and family services, aiming to reduce over-representation of Aboriginal children in care in Victoria.</p>	<p>SARC noted that the Bill was compatible with the rights set out in the Charter (SARC Alert Digest No. 1 of 2023, 9).</p>
<b><i>Corrections Amendment (Parole Reform) Act 2023</i></b>	<p>The Act amends the <i>Corrections Act 1986</i> to restrict access to parole for Paul Denyer in a similar manner to the override applying to Julian Knight and Dr Craig Minogue.</p> <p>The Act also imposes a regime on 'restricted prisoners' limiting access to parole for people serving a sentence of life imprisonment for certain categories of murder.</p> <p>The statement of compatibility acknowledged that these limitations on the protection against cruel, inhuman and degrading treatment (s 10(b)) and the right to humane treatment when deprived of liberty (s 22(1)) of the Charter cannot be justified under s 7(2) of the Charter. It stated that the Charter is being overridden to ensure that victims of serious crimes are provided with certainty and not subjected to stress and trauma through the parole process and to protect the community from the ongoing risk of serious harm of serious offenders.</p> <p>The override declarations do not need to be re-enacted every 5 years (as ordinarily required under section 31(7) of the Charter).</p>	<p>SARC stated that it would write to the minister to ask whether the clauses are compatible with the Charter's right not to be tried or punished more than once (s 26) and whether Queensland's restricted prisoner regime would be a less restrictive means to limit parole (SARC Alert Digest No. 14 of 2024, 18).</p> <p>The minister's response noted that the board retains discretion to apply the reforms in a manner taking account of an individual's circumstances, following a formal hearing and assessment of the individual's parole suitability. However, one clause exhaustively prescribes the circumstances in which the board can make a grant of parole for Mr Denyer, thwarting meaningful life post-release and may therefore be incompatible with section 26 of the Charter (SARC Alert Digest No. 1 of 2024, 24).</p>



Legislation	Summary	Consideration of human rights by parliament and SARC
<b>Crimes Amendment (Non-Fatal Strangulation) Act 2023</b>	<p>This Act amends the <i>Crimes Act 1958</i> to include two new offences of non-fatal strangulation and makes amendments to the <i>Family Violence Protection Act 2008</i> to broaden the definition of family violence.</p> <p>The statement of compatibility noted that the reform promotes the right to life (s 9) and the protection from torture and cruel, inhuman or degrading treatment (s 10) by creating standalone offences that will assist police, early intervention services and justice agencies to better identify, monitor and respond to instances of non-fatal strangulation and family violence. By enabling these earlier responses, the reforms seek to reduce further instances of family violence and allow intervention prior to a potentially fatal outcome.</p> <p>Non-fatal strangulation is a particularly serious form of offending as an act of family violence and an indicator of serious future risk, including homicide.</p>	<p>SARC observed that the effect of the provisions may be to make choking, suffocation or strangulation during sexual activity an offence, even if the other person gives their affirmative consent. This conduct may be included within the definition of ‘family violence’, even if it consists of non-injurious, consensual sexual activity with an intimate partner.</p> <p>SARC expressed its intention to seek further information from the Attorney-General regarding whether this approach is compatible with the right to privacy (s 13). A narrower definition of injury which applies in NSW and NT may be a less restrictive means reasonably available (SARC Alert Digest No. 13 of 2023, 4, 7).</p> <p>The Attorney-General’s response has not yet been circulated in an Alert Digest.</p>

Legislation	Summary	Consideration of human rights by parliament and SARC
<b><i>Health Legislation Amendment (Information Sharing) Act 2023</i></b>	<p>The Act establishes a centralised Electronic Patient Health Information Sharing System (the System) to enable specified health services to share certain health information for the purpose of providing medical treatment and care to patients.</p> <p>The statement of compatibility observes that participating health services may collect, use and disclose patient health information without the consent of the person to whom the information relates. Access to System information is limited to staff of a participating health service authorised to provide medical treatment. This engages but does not limit the right to privacy (s 13), because the capacity to share information is constrained and only relates to delivery of health services to a patient.</p> <p>The Act excludes a right of access to, and correction of health information and the <i>Freedom of Information Act</i> 1982 (FOI Act) does not apply to requests for access to documents in this System. The System will only contain copies of information already stored by public health services.</p> <p>A person wishing to access or amend their health information can approach their health service provider, who is required to share updated information with the System, which automatically updates.</p>	<p>SARC noted that express exemption from the privacy regime in the FOI Act may limit patients' ability to determine who has accessed their health information, but they can still access or amend their health information through their health service provider. Criminal penalties also apply for unauthorised access to the platform (SARC Alert Digest No. 1 of 2023, 18).</p> <p>The Law Institute of Victoria made a submission to SARC expressing serious concern about the absence of an opt-out provision and that participating health services can collect, use or disclose a patient's health information without the need to obtain their consent. The exemption from the FOI Act means that a person cannot exercise their rights to make an FOI request to find out who has accessed their information and hinders the general right under FOI which permits people to access information held about them by the government.</p> <p>This legislation generated parliamentary debate and resulted in amendments to provide for monitoring and independent review of the System, and also establish a process to enable patients to find out who has accessed information about them.</p>

Legislation	Summary	Consideration of human rights by parliament and SARC
<b>Human Rights and Housing Legislation Amendment (Ending Homelessness) Bill 2023</b>	<p>This private member's Bill was tabled in the Legislative Council on 15 August 2023 by Dr Samantha Ratnam. A similar Bill lapsed in the Legislative Council in 2022.</p> <p>The Bill seeks to re-commit the Parliament to the objective of establishing a right to adequate housing within the Charter; amend the <i>Housing Act 1983</i> to set a target of ending homelessness in Victoria by 2030; and require planning and reporting on progress.</p> <p>The statement of compatibility notes that a right to housing would enhance many existing Charter rights including the rights to equality (s 8), freedom of movement (s 12), privacy and reputation (s 13), protection of families and children (s 17), cultural rights, including Aboriginal cultural rights (s 19) and property rights (s 20).</p>	<p>SARC observed that the Bill was compatible with the Charter (SARC Alert Digest No. 11 of 2023, 3).</p>
<b>Justice Legislation Amendment Act 2023</b>	<p>This Act amends a number of Acts to improve the operation of the Victorian justice and legal systems.</p> <p>The statement of compatibility for this omnibus Act observes that it seeks to promote a number of rights under the Charter, including the right to liberty (s 21) and equality (s 8), by ensuring that Aboriginal people receive prompt, culturally appropriate legal assistance and support for their needs in custody. It requires mandatory notification of the Victorian Aboriginal Legal Service in all cases where a person taken into custody self-identifies as Aboriginal or Torres Strait Islander. The Act also promotes the right to life by improving the effectiveness of coronial investigations into reportable deaths, including deaths in custody.</p> <p>The Act aims to address barriers to eligibility to have convictions spent, to allow a wider group to be eligible. This promotes equality (s 8) and the right to privacy (s 13) by protecting people from discrimination based on their criminal history.</p>	<p>SARC observed that the then Bill was compatible with the rights set out in the Charter (SARC Alert Digest No. 10 2023, 16).</p>

Legislation	Summary	Consideration of human rights by parliament and SARC
<b>Summary Offences Amendment (Nazi Salute Prohibition) Act 2023</b>	<p>The Act makes it an offence for a person to publicly perform a Nazi salute or other gesture used by the Nazi Party if they know or ought reasonably know the symbol or gesture is associated with Nazi ideology. It extends the current offence for publicly displaying a Nazi symbol (Hakenkreuz) or other symbol likely to be confused or mistaken for that symbol, to include any symbol or gesture used by the Nazi Party.</p> <p>The statement of compatibility observes that this law promotes the right to recognition and equality before the law (s 8) for groups historically persecuted by the Nazi Party and targeted by neo-Nazis, including the Jewish community, LGBTIQ+ people, people with disability, First Peoples, and other racial and religious groups.</p> <p>The statement of compatibility also notes that the Act lawfully limits the right to privacy (s 13) by broadening current restrictions on a person's ability to privately display Nazi symbols and extends these restrictions to Nazi gestures – if the symbol or gesture can be seen by people in a public place.</p> <p>The Act ensures that appropriate uses of these gestures and symbols for genuine cultural and religious purposes are permitted.</p>	<p>SARC considered the restrictions on freedom of expression appropriate: freedom of expression and religion are not absolute and may be limited when reasonably necessary to respect the rights of others, or for the protection of public order. SARC wrote to the minister seeking further information on how a symbol or gesture used by the Nazi Party is defined (SARC Alert Digest No. 11 of 2023, 11).</p> <p>The minister stated that 'symbol' is to be understood as capturing something, often a material object, used to stand for the Nazi Party and its paramilitary. A gesture is a movement of the body to express an idea or feeling. The Act captures symbols including the SS (Schutzstaffel) Bolts and the SS Death's Head flags, insignia and medals. Innocent or unintentional uses of symbols are not to be prosecuted – for example, where it is for genuine cultural, religious educational or artistic purposes, engaged in reasonably and in good faith (SARC Alert Digest No. 12 of 2023, 21).</p>



# 2.3 Human rights in courts and tribunals

**An essential part of the dialogue model of the Charter is people's capacity to bring human rights claims in Victorian courts and tribunals if their human rights have been breached.**

The Commission can intervene in legal proceedings where a question of law arises about the application of the Charter or the interpretation of another law in light of the Charter.

In 2023, the Charter was raised in 79 cases in courts and tribunals in Victoria and other jurisdictions – see Appendix A for a full list of relevant cases. One of the most significant Charter cases of 2023 was *MB (a pseudonym) v Children's Court of Victoria and Anor*<sup>18</sup> (*MB's Case*).

In *MB's Case*, the Supreme Court quashed a Children's Court order to retain a young person's DNA, finding that the order was unlawful under s 38(1) of the Charter due to a magistrate's failure to consider the plaintiff's right to privacy (s 13) and protection of his best interests as a child (s 17(2)).<sup>19</sup>

In 2022, a 16-year-old, MB, voluntarily provided a DNA sample to Victoria Police in connection with offences he was charged with. MB pleaded guilty to the offences and was convicted and sentenced to detention in a youth justice centre.

Under the *Crimes Act 1958* (Vic), a DNA sample taken from a child must be destroyed unless a court makes a retention order. This requirement recognises children's vulnerability in the legal system. In *MB's Case*, the magistrate granted an application to retain the sample based on the seriousness of the offending but did not consider relevant human rights.

The Supreme Court held that the Children's Court is a public authority when it makes a retention order, which means that the magistrate was required to properly consider and act compatibly with rights when deciding whether to make the order. The Supreme Court found that the retention order was unlawful and that the magistrate did not consider whether the retention order would limit MB's right to privacy or right to protection of his best interests as a child. The Supreme Court set aside the DNA retention order.



# Appendix A:

## Cases raising or considering the Charter

Abdulrahim v Adult Parole Board & Ors [2023] VSC 432 (31 July 2023)

ACO (Guardianship) [2023] VCAT 175 (21 February 2023)

Alksnis v OC 2 PS 646634D (Owners Corporations) [2023] VCAT 1443 (29 December 2023)

Athwal v State of Queensland [2023] QCA 156 (1 August 2023)

Austin BMI Pty Ltd v Deputy Premier [2023] QSC 95 (5 May 2023)

Bashour v Australia & New Zealand Banking Group Limited (Human Rights) [2023] VCAT 1300 (24 November 2023)

Beling v Victorian Legal Services Commissioner (No 2) [2023] VSC 212 (24 April 2023)

Bertram v Homes Victoria (Residential Tenancies) [2023] VCAT 1160 (12 October 2023)

Bespoke Development Group Pty Ltd v Merri-bek CC [2023] VCAT 758 (5 July 2023)

Box v Stonnington CC (Red Dot) [2023] VCAT 289 (20 March 2023)

Bushby (by his litigation representative Webling) v State of Victoria (Department of Education and Training) (No 2) [2023] FCA 340 (5 April 2023)

Carr v Downey (Ruling No. 1) [2023] VCC 1273 (26 July 2023)

Cassin v Peak; Tonzing v Caldwell [2023] VSC 108 (9 March 2023)

Centurion Australia Investments Pty Ltd v APM Group (Aust) Pty Ltd [2023] VSCA 324 (18 December 2023)

Cotterill v Romanes [2023] VSCA 7 (8 February 2023)

Dickson v Yarra Ranges Council [2023] VSC 491 (18 August 2023)

DPP v LD (No 7) [2023] VSC 518 (2 October 2023)

DPP v Smith [2023] VSCA 293 (30 November 2023)

DPP v Tuteru (Ruling No 3) [2023] VSC 93 (3 March 2023)

EYE (Human Rights) [2023] VCAT 1281 (21 November 2023)

Fidge v Medical Board of Australia [2023] VSCA 273 (9 November 2023)

Finding – Inquest into the passing of Veronica Nelson, Coroners Court of Victoria COR 2020 0021 (30 January 2023)

Furnari v Third Try Pty Ltd (Building and Property) [2023] VCAT 1116 (27 September 2023)

Harkness v Roberts [2023] VSC 10 (20 January 2023)

Hassan & Anor v State of Victoria [2023] VSC 478 (17 August 2023)

IJW (a pseudonym) v Swinburne University of Technology [2023] VSC 75 (24 February 2023)

In the matter of ICO [2023] QMHC 1 (24 May 2023)

INP v Secretary Department of Families Fairness and Housing (Review and Regulation) [2023] VCAT 626 (5 June 2023)

JD v Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships [2023] QCAT 316 (25 August 2023)

JIN (Guardianship) [2023] VCAT 152 (17 February 2023)

June Chan v Department of Families, Fairness and Housing T/A DFFH [2023] FWC 503 (16 March 2023)

Karam v The King [2023] VSCA 318 (14 December 2023)

Kuksal v Mioch [2023] VSC 624 (20 December 2023)

Kuksal v State of Victoria [2023] VSC 625 (20 December 2023)

Lawton v State of Victoria (Victoria Police) (Human Rights) [2023] VCAT 440 (26 April 2023)

Lew v Blacher [2023] VSC 604 (13 October 2023)

Lindeman v Stonehaven Proprietary Limited [2023] VSC 556 (19 September 2023)

MB v Children's Court of Victoria & Anor [2023] VSC 666 (21 November 2023)

McKechnie v State of Victoria (Computer Judgment) [2023] VSC 259 (17 May 2023)

McKechnie v The State of Victoria [2023] VSCA 158 (26 June 2023)

McKechnie v Secretary to the Department of Justice and Community Safety (Weekly Payments Judgment) [2023] VSC 542 (11 September 2023)

McKechnie v Secretary to the Department of Justice and Community Safety (Costs Judgment) [2023] VSC 638 (2 November 2023)

McPadden & Ors v Secretary to the Department of Justice & Community Safety [2023] VSC 669 (20 November 2023)

MJG (Guardianship) [2023] VCAT 1234 (9 November 2023)

Ned Kelly Centre Ltd v Australian Rail Track Corporation [2023] VSC 421 (24 July 2023)

Offsite Constructions Pty Ltd v Maribyrnong CC [2023] VCAT 1147 (12 October 2023)

O'Mahoney v Hobsons Bay CC [2023] VCAT 202 (29 March 2023)

O'Mahoney v Hobsons Bay CC [2023] VCAT 644 (9 June 2023)

Omega Building Group Pty Ltd v Shininggarden Pty Ltd (Building and Property) [2023] VCAT 1024 (31 August 2023)

Owners Corporation 1 Plan No PS 707553K and Ors v Shangri-La Construction Pty Ltd (ACN 130 534 244) and Anor (Revision 1) [2023] VCC 1473 (24 August 2023)

Owners Corporation & Ors v Shangri-La Construction & Anor (No 2) [2023] VCC 655 (28 April 2023)

PDP [2023] VMHT 2 (24 January 2023)

PPP (a pseudonym) v DDA (a pseudonym) [2023] VSC 494 (23 August 2023)



PPP (a pseudonym) v DDA  
(a pseudonym) (No 2) [2023] VSC 527  
(7 September 2023)

Re Legal Super Pty Ltd [2023] VSC 545  
(20 September 2023)

Riaz v City of Greater Dandenong [2023]  
VSCA 190 (18 August 2023)

Sayed v Salvation Army Housing [2023]  
FCA 526 (26 May 2023)

SDW [2023] VMHT 3 (20 February 2023)

Secretary to the Department of  
Families, Fairness and Housing v AM  
(a pseudonym) [2023] VSC 291 (2 June  
2023)

Soo v Corrections Victoria Department  
of Justice and Community Safety  
(Human Rights) [2023] VCAT 135  
(10 February 2023)

ST v State of Queensland (Department  
of Education) [2023] QIRC 4 (10 January  
2023)

Stricta Pty Ltd v CW Leasing Services  
Pty Ltd (Building and Property) [2023]  
VCAT 1092 (20 September 2023)

Studart-Teles v The Department of  
Education and Training (State of Victoria)  
(Human Rights) [2023] VCAT 1226  
(6 November 2023)

Taylor v State of Victoria [2023] VSC 320  
(21 June 2023)

Thompson v The Secretary Department  
of Health (Review and Regulation) [2023]  
VCAT 1386 (14 December 2023)

Vallianos v Coroners Court of Victoria  
& Ors (Costs) [2023] VSC 121 (20 March  
2023)

Vallianos v Coroners Court of Victoria &  
Ors [2023] VSC 48 (14 February 2023)

Van Niekerk v TEEG Australia Pty  
Ltd (Human Rights) [2023] VCAT 41  
(16 January 2023)

Victorian Legal Services Board v Kuksal  
(Recusal Application) (No 2) [2023] VSC  
698 (28 November 2023)

Vision Australia Ltd v Elisha [2023] VSCA  
265 (1 November 2023)

VMX [2023] VMHT 4 (6 March 2023)

XNC [2023] VMHT 1 (11 January 2023)

VWT (Guardianship) [2023] VCAT 1151  
(12 October 2023)

Wilson v State of Victoria [2023] FCA 111  
(20 February 2023)

Wilson-Browne v Greater Geelong CC  
[2023] VCAT 425 (21 April 2023)

XIY (Guardianship) [2023] VCAT 809  
(18 July 2023)

Zayne v The King [2023] VSCA 311  
(11 December 2023)

Zhong v Attorney-General of Victoria  
[2023] VSC 634 (1 November 2023)

Zhong, In the matter of an application  
for leave to issue or file [2023] HCATrans  
98 (3 August 2023)

## Notes

- 1 Victoria, *Parliamentary Debates*, Legislative Assembly, 16 August 2023, 2891 (Anthony Carbines).
- 2 Corrections Victoria, Statistical profile 2009-2010 to 2019-2020 Dataset: Table 1.2.
- 3 Victoria, *Parliamentary Debates*, Legislative Assembly, 30 August 2023, 3309 (Chris Crewther).
- 4 Victoria, *Parliamentary Debates*, Legislative Assembly, 16 August 2023, 2898 (Anthony Carbines). The Coroner's 2023 findings in the Inquest into the passing of Veronica Nelson observed that the disproportionate effects of the reverse onus regime of the Bail Act on remand rates had not abated: [2023] COR 2020 0021, [374].
- 5 Findings of Coroner Simon McGregor, Inquest into the passing of Veronica Nelson (COR 2020 0021), 30 January 2023, [375].
- 6 Parliament of Victoria, Second Reading Speech, (Anthony Carbines, 16 August 2023), 2897.  
The Commission's 2022 Charter Report features this case.
- 7 Findings of Coroner Simon McGregor, Inquest into the passing of Veronica Nelson (COR 2020 0021), 30 January 2023, [274], [390], Appendix B, [15].
- 8 The Act repeals the offences of contravening a conduct condition of bail, and committing an indictable offence while on bail.
- 9 Victoria, *Parliamentary Debates*, Legislative Assembly, 16 August 2023, 2891 (Anthony Carbines).
- 10 Victorian Aboriginal Legal Service, 'Bail reform is a step towards justice and Poccum's Law' (5 October 2023) <<https://www.vals.org.au/bail-reform-is-a-step-towards-justice-and-poccums-law/>>; VALS, Aboriginal led service providers, community legal centres, Liberty Victoria, universities, HRLC, LIV have called for Poccum's law ('Poccum' was the nickname Veronica Nelson received from her family):
  - removal of the presumption against bail
  - bail being granted unless the prosecution shows that there is a specific and immediate risk to the safety of another person; a serious risk of interfering with a witness; or a demonstrable risk that the person will flee the jurisdiction
  - an explicit requirement not to remand a person for an offence unlikely to result in a sentence of imprisonment
  - repeal of all bail offences. See Victorian Aboriginal Legal Service, 'Poccum's Law: The Blueprint for Bail Reform' <<https://www.vals.org.au/wp-content/uploads/2023/03/Poccums-Law.pdf>>.
- 11 *Charter of Human Rights and Responsibilities Act 2006* (Vic), section 31.
- 12 *Charter of Human Rights and Responsibilities Act 2006* (Vic), sections 1(3), 31(4); Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2006, 1292 (Rob Hulls, Attorney-General).
- 13 *Charter of Human Rights and Responsibilities Act 2006* (Vic), section 31(6).
- 14 Mr Denyer must be in imminent danger of dying, or be seriously incapacitated and, as a result, no longer has the physical capacity to do harm to a person. He must also demonstrate that he does not pose any risk to the community, and the Adult Parole Board must be satisfied that granting parole is justified.
- 15 These categories include: where a person is serving a life sentence for two or more murder offences; one murder offence where the victim was a child; or one offence of murder where the victim was also a victim of sexual offending by the prisoner.
- 16 Victoria, *Parliamentary Debates*, Legislative Assembly, 2 November 2023, 4250 (Anthony Carbines).
- 17 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest* (Digest No. 14 of 2024) 18.
- 18 *MB (a pseudonym) v Children's Court of Victoria & Anor* [2023] VSC 666.
- 19 *Ibid*, [37], [42]–[44], [47].

## Images

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