



**Victorian Equal Opportunity  
& Human Rights Commission**



**2022 Report on  
the Operation of  
the Charter of  
Human Rights and  
Responsibilities**

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### Contact us

Enquiry Line	1300 292 153
Fax	1300 891 858
NRS Voice Relay	1300 555 727 then quote 1300 292 153
Interpreters	1300 152 494
Email	<a href="mailto:enquiries@veohrc.vic.gov.au">enquiries@veohrc.vic.gov.au</a>
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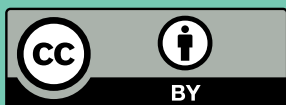
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### Acknowledgement

The Victorian Equal Opportunity and Human Rights Commission proudly acknowledges and celebrates the First Nations peoples of Victoria and their ongoing strength in upholding some of the world's oldest living cultures. We acknowledge the Traditional Owners of the lands throughout what is now Victoria, where we live and work, and pay our respects to their elders, past, present and emerging.

### 2022 Charter Report

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**Victorian Equal Opportunity  
& Human Rights Commission**

# **2022 Report on the Operation of the Charter of Human Rights and Responsibilities**

# From the Commissioner

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

1 August 2023

Dear Attorney-General

On behalf of the Victorian Equal Opportunity and Human Rights Commission (the Commission), I am pleased to present our 15th annual report on the operation of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (the Charter) in the 2022 calendar year.

In accordance with section 41(a) of the Charter, this report examines the operation of the Charter. I note that during 2022, the Supreme Court of Victoria did not make any declarations of inconsistent interpretation, and the Victorian Parliament did not pass any override declarations. Accordingly, it has not been necessary for this report to examine matters under section 41(a)(ii) and (iii) of the Charter.

The 2021 and 2020 Charter Reports were heavily influenced by the impact and limitations on human rights resulting from public health measures established in response to the COVID-19 pandemic. The year 2022 saw an easing of the public health response to COVID-19, with the pandemic declaration ending on 12 October.

The coronial inquest into the passing of Veronica Nelson, a proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, was a significant event in 2022, not just for Veronica's family, but for Victoria's First Nations communities and the wider Victorian community. In addition to reporting on the Charter's role in law-making and the work of public authorities in 2022, this report also provides a summary of the Commission's submissions to the inquest and how the Charter contributed to the coroner's findings and recommendations.

Another significant human rights event in 2022 was the completion of the Cultural Review of the Adult Custodial Corrections System. Following the Victorian Government's response to the review, we look forward to working with the Department of Justice and Community Safety on its custodial-focused integrity training program, including guidance on making decisions in compliance with the Charter.

The Commission is committed to its role in protecting and promoting human rights in Victoria, and I look forward to continuing to work with the Victorian Government and with the broader Victorian community to uphold human rights.

Yours sincerely



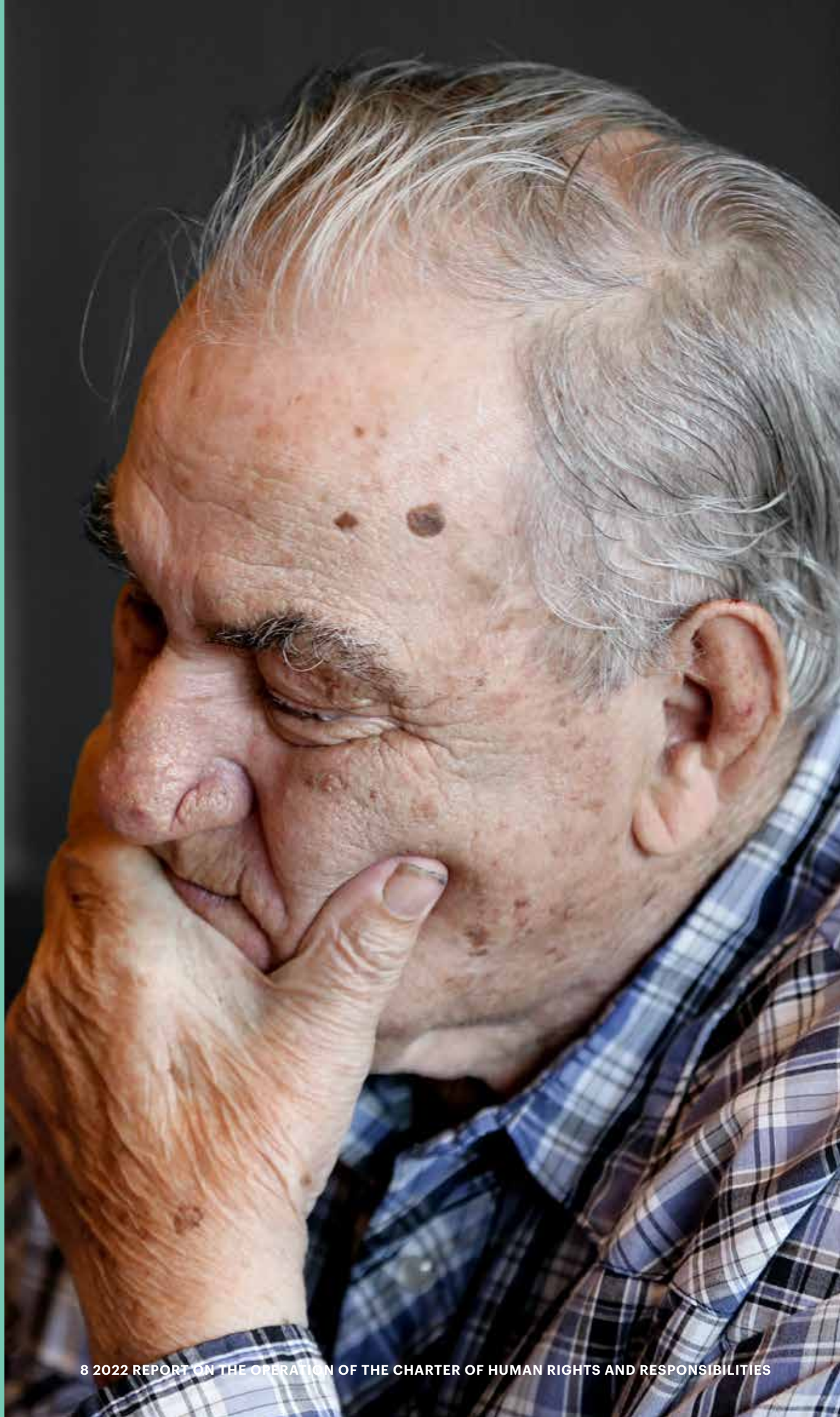
A handwritten signature in black ink, appearing to read 'Ro Allen', written in a cursive style.

**Ro Allen**  
**Victorian Equal Opportunity**  
**and Human Rights Commissioner**



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1

# Victoria's human rights framework

# Victoria's human rights framework

When the Victorian Parliament passed the *Charter of Human Rights and Responsibilities Act 2006* (the Charter), it affirmed the importance of building awareness of and respect for human rights across the community.

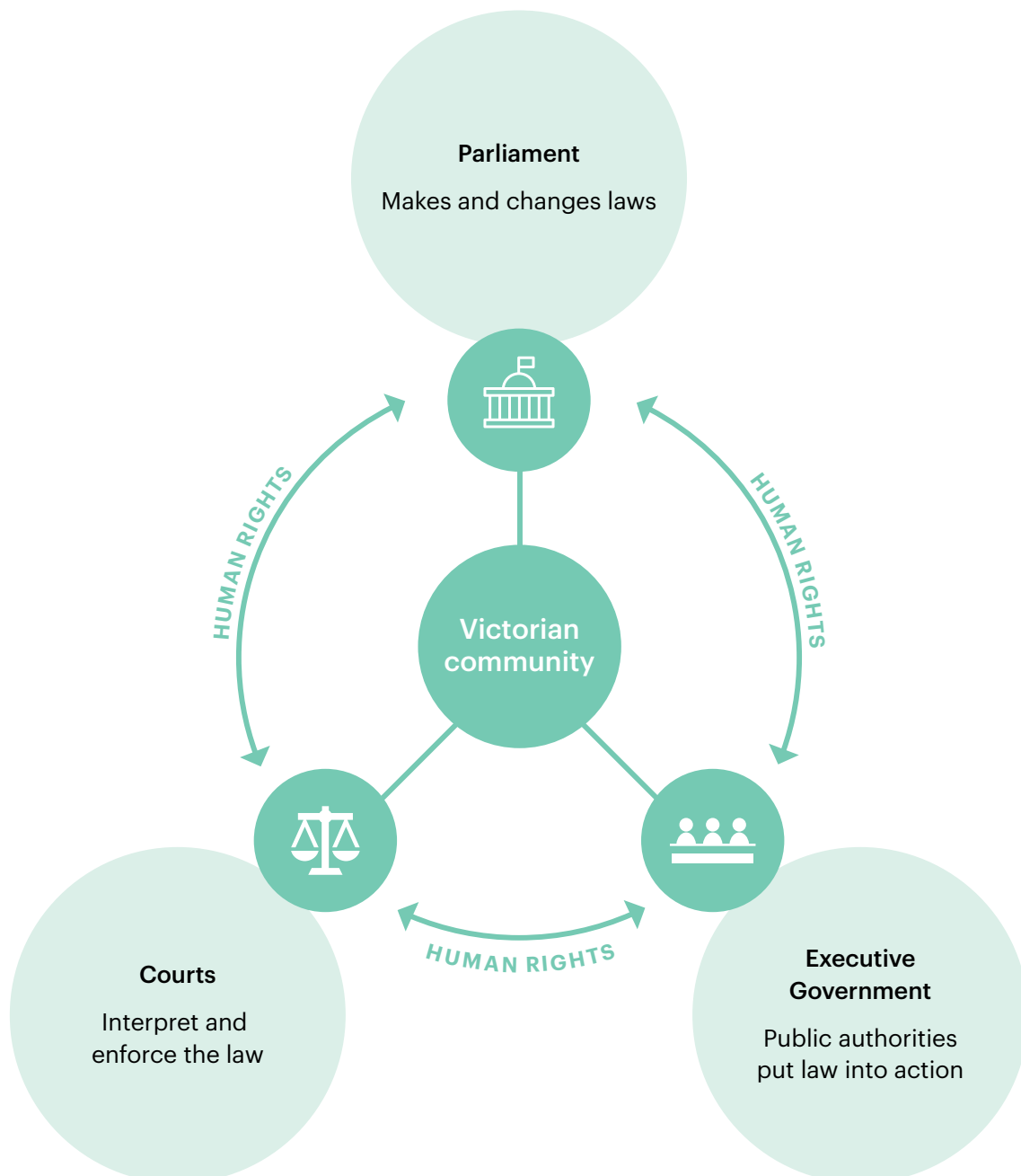
Human rights are a basic entitlement of every one of us, regardless of our background, culture, sex, age or what we believe. The Charter enshrines 20 civil, political and cultural rights into Victorian law. These rights reflect the fundamental values of freedom, equality, respect and dignity. These values are important 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

## **Human rights in courts and tribunals**

# Human rights in courts and tribunals

Taking a case to a court or tribunal is an important way for individuals and groups to assert their human rights and obtain remedies if they have been breached. Decisions by courts and tribunals also help authorities interpret and apply Charter rights.

In 2022 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.

As well as the Charter being an important way for people and groups to assert their human rights, the Charter also allows the Commission to 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.<sup>1</sup>

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

<sup>1</sup> *Charter of Human Rights and Responsibilities Act 2006*, s 40.



# Coronial inquest into the death in custody of Veronica Nelson

In 2022 the Commission intervened in one proceeding – the coronial inquest into the death in custody of Veronica Nelson.

Veronica, aged 37, was a proud Gunditjmarra, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman who loved her culture and was loved by her family, community, and friends.

On the afternoon of 30 December 2019, Veronica was arrested in Melbourne’s CBD on outstanding warrants for alleged shoplifting-related offences. Veronica represented herself in applying for bail on 31 December, but her application was refused. Later that day, Veronica was transferred to the Dame Phyllis Frost Centre, Victoria’s maximum-security women’s prison.<sup>2</sup>

During her time in custody, Veronica was suffering from opioid withdrawal and an undiagnosed medical condition. Despite Veronica repeatedly asking for help, prison officers often ignored her requests and did not escalate the level of care she received despite her showing signs of deterioration. Veronica died alone in prison on the morning of 2 January 2020, three days after being arrested and taken into custody.

Veronica’s treatment and death in custody became the subject of a coronial inquest launched in 2022, with Coroner Simon McGregor’s findings delivered on 30 January 2023.



<sup>2</sup> Inquest into the passing of Veronica Nelson (Coroner’s Court of Victoria, Coroner Simon McGregor, 30 January 2023).

# Human rights engaged by Veronica's arrest and remand, the provision of healthcare and her custodial management

The Commission made several submissions to the inquest into Veronica's passing, providing guidance on the ways in which the Charter applied to the Coroners Court and human rights raised by the case. A brief overview of the relevant rights and examples from the Commission's submission of how Veronica's rights were impacted by her arrest and incarceration are provided below.

## The right to recognition and equality before the law

Section 8 of the Charter protects a number of equality rights, including the right to the equal and effective protection against discrimination. The concept of discrimination in the Charter is tied to the *Equal Opportunity Act 2010 (Vic)*.<sup>3</sup> Veronica was an Aboriginal woman with a drug dependence who had multiple protected attributes under the Equal Opportunity Act (including race, sex and disability). Her arrest, care and treatment may have been affected by stigma and discrimination based on her Aboriginality and/or drug dependence, including overlapping and compounding forms of discrimination due to the combination of these attributes. The right to equality also encompasses a right to the enjoyment of other rights without discrimination; the Commission submitted it was relevant for the coroner to consider the extent to which Veronica's human rights were limited in a discriminatory manner.

## The right to life

Section 9 of the Charter states that 'Every person has the right to life and has the right not to be arbitrarily deprived of life'. The Commission submitted that the right to life was engaged in this case given the risk of death from extreme withdrawal symptoms. The Charter permits the court to consider international human rights laws, which places both negative and positive obligations on public authorities:

- a negative obligation to refrain from conduct that will result in the arbitrary deprivation of life
- a positive obligation to take measures to prevent and protect individuals against the arbitrary deprivation of life.

The positive scope of the right also required there to be an effective investigation into Veronica's death by the Coroners Court.

## Protection from torture and cruel, inhuman or degrading treatment

Section 10(b) of the Charter provides that 'A person must not be ... treated or punished in a cruel, inhuman or degrading way'. The Commission submitted that the refusal to provide methadone treatment to Veronica, even though the

3 Under the Equal Opportunity Act it is unlawful to discriminate against a person because of a protected personal attribute, such as race, sex and disability.

refusal was in accordance with prison guidelines, amounted to inhuman or degrading treatment. Veronica experienced symptoms of withdrawal and received inadequate treatment to alleviate her symptoms. She had no access to a sub-acute medical bed that would have allowed proper monitoring and management of her symptoms nor was she transferred to hospital; instead, she was locked in a prison cell while very unwell, and the care provided was far from supportive. She ultimately died alone, on the floor of a prison cell in considerable physical, psychological and spiritual pain.

### **Cultural rights**

Section 19 of the Charter protects cultural rights as well as the distinct cultural rights of Aboriginal people. The preamble to the Charter also recognises the special importance of human rights to Aboriginal people, who hold diverse spiritual, social, cultural and economic relationship with their traditional lands and waters. The Commission submitted that, as an Aboriginal woman, Veronica held distinct cultural rights. Our submissions highlighted Veronica's Aboriginality as a characteristic for the court to consider, including the cultural competence of those who interacted with Veronica in the lead up to her death, and the extent to which the care and treatment she received was culturally safe.

### **Right to liberty and security of person**

Under section 21 of the Charter, everyone has the right to liberty and security. This right is primarily related to physical liberty of the person, and the right only applies when the person is deprived of their liberty. Veronica was refused bail because she was not able to establish exceptional circumstances why she should be granted bail, as required by the *Bail Act 1977 (Vic)* (Bail Act). The Commission submitted that her remand into custody was incompatible with her right to liberty, which includes a right not to be refused bail and a right not to be subjected to arbitrary detention. The Commission noted that the effect of the Bail Act and practices around routinely denying bail, including to people accused of very low-level offences, can have the effect of incarcerating people whose offences are often linked to entrenched disadvantage and poverty.

### **Humane treatment when deprived of liberty**

Veronica's arrest and detention engaged her right to be treated with humanity and respect for her inherent dignity when deprived of liberty in accordance with section 22 of the Charter. Public authorities must take positive measures to ensure that detained persons are treated with dignity and humanity. This encompasses ensuring adequate conditions of accommodation, food and personal hygiene, clothing and bedding standards, access to medical services and contact with people outside of detention. The Commission submitted that, at best, Veronica's treatment by certain prison officers was neglectful and demonstrated an indifference to her suffering and basic needs. The Commission said that certain prison officers subjected Veronica to treatment that was inhumane, and some officers failed to treat Veronica with humanity and respect for her dignity as a person. The Commission also said that this treatment and indifference to Veronica's suffering was likely contributed to by underlying discriminatory attitudes toward Aboriginal people, people with drug dependencies, or both.

## Coroner's findings

Coroner McGregor agreed with the Commission that all Charter rights identified were engaged variously during Veronica's arrest and remand, provision of healthcare and her custodial management. He noted the Commission's role and involvement in the hearing, and the Charter features prominently throughout his written findings and recommendations, which align closely with our submissions. His Honour found Veronica experienced 'cruel' and 'degrading' treatment and that her death was preventable. The full finding can be found on the [Coroners Court website](#).

**'I find that the Bail Act has a discriminatory impact on First Nations people resulting in grossly disproportionate rates of remand in custody, the most egregious of which affect alleged offenders who are Aboriginal and/or Torres Strait Islander women.'**

**'I find that Justice Health's Opioid Substitution Therapy Program Guidelines infringe prisoners' rights to be treated humanely while deprived of liberty and their right to life given the greater risk of fatal overdose upon release contrary to sections 22 and 9 of the Charter.'**

**'Although I acknowledge that [Correct Care Australasia] was obliged to implement the Guidelines, I am not satisfied that the treatment available to Veronica for her opioid dependence, by virtue of the [Correct Care Australasia] Opioid Substitution Program Policy, was adequate to treat her withdrawal and so I find that the treatment she received constituted cruel and inhumane treatment contrary to section 10 of the Charter.'**

**'I find that the absence of bed-based care at [the Dame Phyllis Frost Centre] infringed Veronica's rights to life and equality pursuant to sections 9 and 8 of the Charter.'**

Coroner McGregor made 39 recommendations. Among these, he recommended that within 12 months of the findings, the relevant public authorities request, under section 41(c) of the Charter, the Commission to conduct a review of any improvements to programs, practices and facilities made in response to the recommendations. We are currently working with the Department of Justice and Community Safety to develop an implementation framework that can be used to review the Victorian Government's progress in implementing the coroner's recommendations and ensure that the changes made achieve the outcomes intended by the recommendations.





**3**

# **Human rights in law-making**

# Human rights in law-making

In Victoria, the Charter requires human rights be considered at every stage of the lawmaking process. All bills introduced into parliament must be accompanied by a statement of compatibility, which provides an overview of any human rights impacted by a bill and why any proposed limitations are reasonable and justified.

Parliament's Scrutiny of Acts and Regulations Committee (SARC) assists with this process by preparing a report on tabled bills, highlighting whether SARC considers it to be compatible with human rights. Members of Parliament are able to consider these statements and reports, and raise any concerns during parliamentary debate.

## Legislative activity

Bills introduced into Parliament	60
Questions about rights referred to a member or minister by SARC	20
Responses received by SARC from a member or minister	12
Public submissions made to SARC	0
Questions about rights referred to Parliament by SARC	0
Statements of incompatibility or partial incompatibility	0
Override declarations	0



# Key Charter bills in 2022

In 2022 the Victorian Parliament made significant progress towards protecting the human rights of Victorians, notably in the areas of Treaty, mental health and affirmative consent. These are examples of parliament actively engaging with the Charter and contemplating human rights issues during parliamentary debates and in the law-making process.

A range of Charter rights and limitations on these rights were raised by the bills, ranging from the right not to be treated in a cruel, inhuman or degrading way (s 10(b)) engaged by the Mental Health and Wellbeing Bill 2022, to the right to equality (s 8) and the right not to be subjected to medical treatment without full, free and informed consent (s 10(c)) engaged by the Public Health and Wellbeing Amendment Bill 2022.

## Case study: Summary Offences Amendment (Nazi Symbol Prohibition) Bill 2022

In May 2022, the Victorian Government introduced a bill to create a criminal offence that prohibits a person from intentionally displaying the hook cross (Nazi Hakenkreuz) in a public place or in public view. This legislation was introduced in response to a recommendation of the Legislative Assembly's Legal and Social Issues Committee's Inquiry into Anti-vilification Protections in Victoria.

The passage of this Bill illustrates the typical process for the Victorian Parliament to consider human rights during the law-making process. For example, in examining this Bill, SARC took note of a clause that stated a person who intentionally displays a Nazi symbol in public will be guilty of an offence unless the person establishes that the display was reasonable, in good faith and for a set of specified purposes (including for example genuine academic, artistic, religious, scientific, cultural or educational purposes). SARC was concerned that this clause impacted the right to be presumed innocent until proved guilty under law (s 25(1)) and wrote to the Attorney-General seeking further information.

In response to SARC, the Attorney-General advised that the accused will be required to offer or point to evidence that the display of a Nazi symbol was for one of the specified purposes. Once the accused has done so, the burden of proof of the offence would be borne by the prosecution. In some cases, House amendments are tabled by the government in response to issues raised by SARC, however this Bill was ultimately passed by the Parliament in June 2022 without amendment.

Bill	Summary of Bill	Consideration of human rights by parliament and SARC
<p><b>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Bill 2022</b></p>	<p>This Bill establishes a framework for periodic visits to places of detention by the United Nations Subcommittee (Subcommittee) on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment. It provides for Subcommittee inspections within Victoria during its periodic visits under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).</p> <p>This Bill aims to add to existing oversight mechanisms to protect individuals in detention from torture and other cruel, inhuman or degrading treatment.</p> <p>This Bill engages the Charter rights to equality (s 8); the right to protection from torture and cruel, inhuman or degrading treatment (s 10); the right to humane treatment when deprived of liberty (s 22); and the right to privacy (s 13).</p>	<p>SARC noted that the Bill was compatible with the Charter (Alert Digest No 11, 2022, p43–44).</p>
<p><b>Treaty Authority and Other Treaty Elements Bill 2022</b></p>	<p>This Bill supports the establishment and ongoing operation of the Treaty Authority following creation of the Treaty Authority Agreement. The Bill provides the Authority a set of legal powers equivalent to a body corporate. The Bill also amends the <i>Advancing the Treaty Process with Aboriginal Victorians Act 2018</i> concerning the treaty negotiation framework and a self-determination fund.</p> <p>The Bill engages the cultural rights of Aboriginal persons under s 19(2) of the Charter.</p>	<p>SARC stated that it will write to the Minister for Aboriginal Affairs (Alert Digest No 9, 2022, p22) seeking further information regarding whether the Treaty Authority is a public authority under the Charter and whether any relief or remedy is available for a breach of clause 12.3 (Human rights) of the Treaty Authority Agreement.</p> <p>No ministerial response was received.</p>
<p><b>Child Employment Amendment Bill 2022</b></p>	<p>This Bill follows a review of the <i>Child Employment Act 2019</i> and creates a new system of licences to regulate the employment of children under the age of 15 years, replacing the previous permit system; updates the definition of ‘employment’ for the purposes of the Act; and amends compliance and enforcement provisions.</p> <p>This Bill engages the Charter rights of protection of children (s 17(2)), equality (s 8), privacy (s 13) and protection of family (s 17(1)).</p>	<p>SARC observed that the Bill was compatible with the Charter (Alert Digest No 7 2022, p1).</p>

Bill	Summary of Bill	Consideration of human rights by parliament and SARC
<p><b>Mental Health and Wellbeing Bill 2022</b></p>	<p>This Bill provides a new legislative scheme for mental health and wellbeing in Victoria, replacing the <i>Mental Health Act 2014</i>. This Bill aims to address the recommendation of the Royal Commission into Victoria’s Mental Health System for a new Act.</p> <p>The Bill aims to:</p> <ul style="list-style-type: none"> <li>• protect and promote the human rights and dignity of people living with mental illness by providing them with assessment and treatment in the least restrictive way possible in the circumstances</li> <li>• recognise and respect the right of people with mental illness or psychological distress to speak and be heard in their own voices.</li> </ul> <p>It establishes mental health advocacy services to support the human rights of people at risk of compulsory treatment in mental health care in an opt-out system that notifies the service when a person is being compulsorily treated.</p> <p>This Bill engages the Charter right to equality (s 8); the right not to be subjected to cruel, inhuman and degrading treatment (s 10(b)) or medical treatment without consent (s 10(c)); freedom of movement (s 12); privacy (s 13(a)); freedom of thought, conscience, religion and belief (s 14); the right to the protection of families and children (s 17); and cultural rights (s 19); liberty (s 21); the right to humane treatment when deprived of liberty (s 22); and the right to a fair hearing (s 24).</p>	<p>SARC noted that it would write to the Minister for Mental Health seeking further information (Alert Digest 10, 2022, p14), regarding:</p> <ul style="list-style-type: none"> <li>• whether a particular clause requiring the President of the Mental Health Tribunal to work full-time is compatible with the right of parents and carers to equal protection of the law without discrimination (s 8(3)) as comparable judicial officers can work part-time</li> <li>• the compatibility of provisions relating to the powers of the Health Secretary with the Charter rights against discrimination</li> <li>• clarifying the meaning of a clause requiring a person accused of providing false or misleading information to ‘show’ they believed on reasonable grounds that the information was true or not misleading.</li> </ul> <p>No ministerial response was received.</p>

Bill	Summary of Bill	Consideration of human rights by parliament and SARC
<p><b>Summary Offences Amendment (Nazi Symbol Prohibition) Bill 2022</b></p>	<p>This Bill amends the <i>Summary Offences Act 1966</i> by establishing a criminal offence prohibiting a person intentionally displaying the Nazi symbol (Hakenkreuz) in a public place or in public view – where the person knows, or ought to know, that the symbol is a symbol associated with Nazi ideology.</p> <p>The Bill includes exceptions where a person displays a symbol reasonably and in good faith: for a genuine academic, artistic, religious, scientific, cultural or educational purpose; fair accurate reporting of public interest, or in opposition to fascism or Nazism. The Bill acknowledges the importance of the swastika as a benevolent symbol for religions, which signals cultural or religious use is not intended to be inhibited.</p> <p>This Bill engages the Charter rights of recognition and equality before the law (s 8); right to culture (s 19); right to privacy (s 13); freedom of thought (s 14); and right to presumption of innocence (s 25).</p>	<p>SARC indicated that it would write to the Attorney-General (Alert Digest No 7, 2022, p7) seeking more information about the effect of Clause 3 of the Bill which requires a person to establish that their display of a Nazi symbol in public was reasonable, in good faith and for a specified appropriate purpose. SARC also asked for further information about a new provision that may also have the effect that a person must remove a Nazi symbol from display if a police officer reasonably believes the display is not compliant with the new section 41K.</p> <p>A response was received (the Hon. Jaclyn Symes MP – Alert Digest No 9, 2022, p27).</p>
<p><b>Public Health and Wellbeing Amendment Bill 2022</b></p>	<p>This Bill amends the <i>Public Health and Wellbeing Act 2008</i> to remove references to HIV and Hepatitis C.</p> <p>This Bill also expands the Chief Health Officer’s powers to make examination and testing orders if it is necessary to ascertain either or both whether a person has an infectious disease, or the likelihood that a person who has an infectious disease could transmit that disease. The orders can allow the compelled gathering of health information, the issuing of an arrest warrant by a magistrate, require a person to undergo examination or testing and permit a police officer to use reasonable force to detain a person to take them to a place for the examination and testing order to be carried out.</p> <p>This Bill engages the Charter rights to equality (s 8); bodily privacy (s 13); and the right not to be subjected to medical treatment without full, free and informed consent (s 10) and the right to a fair hearing (s 24(1)).</p>	<p>SARC observed that the Bill was compatible with the Charter (Alert Digest No 2, 2022, p4).</p>

Bill	Summary of Bill	Consideration of human rights by parliament and SARC
<p><b>Crimes Legislation Amendment Bill 2022</b></p>	<p>This Bill amends the <i>Crimes Act 1958</i>, by introducing a new offence of engaging in grossly offensive public conduct and abolishing the common law offence of outraging public decency.</p> <p>The Bill amends the <i>Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021</i> to extend the commencement by 12 months to 7 November 2023, due to the COVID-19 pandemic causing significant delays in implementation and trial of health-based responses to public drunkenness.</p> <p>This Bill engages the Charter rights to freedom of expression (s 15); privacy and reputation (s 13) freedom of thought, conscience, religion and belief (s 14); peaceful assembly and freedom of association (s 16); right to take part in public life (s 18); right to culture (s 19); and right to be presumed innocent until proved guilty according to law (s 25).</p>	<p>SARC noted that it would write to the Attorney-General (Alert Digest No 10, 2022, p10) seeking further information about the effect of clauses around public drunkenness – a person may be arrested, fined or imprisoned for being drunk in public from 7 November 2022 to 7 November 2023. SARC sought information about how this clause was compatible with the Charter’s rights to equality, life, liberty, security and culture.</p> <p>A response was received (the Hon. Jaclyn Symes MP – Alert Digest No 11, 2022, p51).</p>
<p><b>Justice Legislation Amendment (Sexual Offences and Other Matters) Bill 2022</b></p>	<p>This Bill establishes new offence provisions criminalising conduct to implement 13 recommendations made by the Victorian Law Reform Commission 2021 report <i>Improving the Justice System Response to Sexual Offences</i>. It revises the definition of consent to make it clear that consent can never be assumed and a person does not consent just because of previous behaviour; rather, consent involves ongoing, mutual communication.</p> <p>The Bill introduces a trial judge’s obligations to give directions on consent in sexual assault trials designed to counter misconceptions about sexual violence.</p> <p>This Bill engages the Charter rights to equality (s 8); the right to life (s 9); freedom of movement (s 12); privacy and reputation (s 13); freedom of expression (s 15); rights of children (s 17(2)); property rights (s 20); fair hearing (s 24); rights in criminal proceedings (s 25); and retrospective criminal laws (s 27).</p>	<p>SARC stated that it would write to the Attorney-General (Alert Digest No 11, 2022, p17) regarding new offence provisions around sexual assault.</p> <p>A new section may have the effect that a person who intentionally engages in a sex act with another person without doing or saying anything to find out whether the other person consents to the sex act may be guilty of rape or sexual assault. This may engage the Charter’s rights against arbitrary interferences in privacy and to be presumed innocent until proven guilty.</p> <p>SARC also sought to clarify whether making it an offence for an accused to produce or distribute an intimate image of an adult where the accused reasonably believes that the adult consented is compatible with the right against arbitrary interferences in privacy.</p> <p>No ministerial response was received.</p>

Bill	Summary of Bill	Consideration of human rights by parliament and SARC
<p><b>Justice Legislation Amendment Bill 2022</b></p>	<p>This Bill will expand the exceptions to the <i>Equal Opportunity Act 2010</i> secrecy provision to enable the Victorian Equal Opportunity and Human Rights Commission (the Commission) to disclose confidential information when it is necessary to promote the safety and wellbeing of others, including children. The Bill will also enable the Commission to disclose information to the Victorian Civil and Administrative Tribunal about of freedom of information review applications.</p> <p>This Bill engages the Charter rights to recognition and equality before the law (s 8) and the right to privacy (s 13), the protection of children (s 17(2)) and the right to a fair hearing (s 24).</p>	<p>SARC observed that the Bill was compatible with the Charter (Alert Digest No 6, 2022, p12).</p>
<p><b>Children, Youth and Families Amendment (Raise the Age) Bill 2022</b></p>	<p>This private member's Bill was tabled in parliament in 2022 by Dr Samantha Ratnam MP; however, the statement of compatibility for the Bill was tabled in 2023.</p> <p>This Bill seeks to amend the <i>Children, Youth and Families Act 2005</i> to raise the age of criminal responsibility in Victoria from 10 to 14 and to prohibit the use of solitary confinement on children held in youth detention.</p> <p>This Bill engages the Charter rights to recognition and equality before the law (s 8); right to life (s 9); the right of protection of families and children (s 17); the rights of children in the criminal process (s 23); protection from torture and cruel, inhuman or degrading treatment (s 10); cultural rights, including Aboriginal cultural rights (s 19); security of the person (s 21); and humane treatment when deprived of liberty (s 22).</p>	<p>SARC noted that it would write to the member (Alert Digest No 1, 2023, p10) seeking information regarding whether a prohibition on solitary confinement will apply when it is the only reasonable step available to prevent an immediate threat to safety or to respond to an emergency (including a pandemic). SARC asked whether or not prohibiting such a measure in youth remand and residential and justice centres is compatible with youth detainees' rights to life (s 9) and to security of the person (s 21).</p> <p>No member response was received.</p>

Bill	Summary of Bill	Consideration of human rights by parliament and SARC
<p><b>Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Bill 2022</b></p>	<p>This Bill aims to amend the <i>Sustainable Forests (Timber) Act 2004</i> and to strengthen the enforcement framework for the timber harvesting safety zone.</p> <p>This Bill aims to reduce the risk to public safety and disruption of timber harvesting safety zones and to deter activities that may produce a risk to public safety within timber harvesting zones.</p> <p>It has the effect of increasing penalties for existing offences; widening the meaning of a 'prohibited thing'; allowing for additional search and seizure powers; and creating a framework for banning notices.</p> <p>This Bill engages the Charter rights to the freedom of movement (s 12) and property (s 20).</p>	<p>SARC observed that the Bill was compatible with the Charter (Alert Digest 8 of 2022, p8).</p>
<p><b>Human Rights and Housing Legislation Amendment (Ending Homelessness) Bill 2022</b></p>	<p>This private member's Bill was tabled in the Legislative Council by Dr Samantha Ratnam MP. The Bill lapsed at the end of the 59th Parliament in November 2022.</p> <p>The Bill seeks to amend the <i>Charter of Human Rights and Responsibilities Act 2006</i> to establish a right to housing. It also seeks to amend <i>the Housing Act 1983</i> by the inclusion of a target of eliminating homelessness in Victoria by 2030.</p> <p>This Bill engages the Charter rights to recognition and equality before the law (s 8); the right to 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 (Alert Digest No 4, 2022, p4).</p>





# 4

## **The Charter and public authorities**

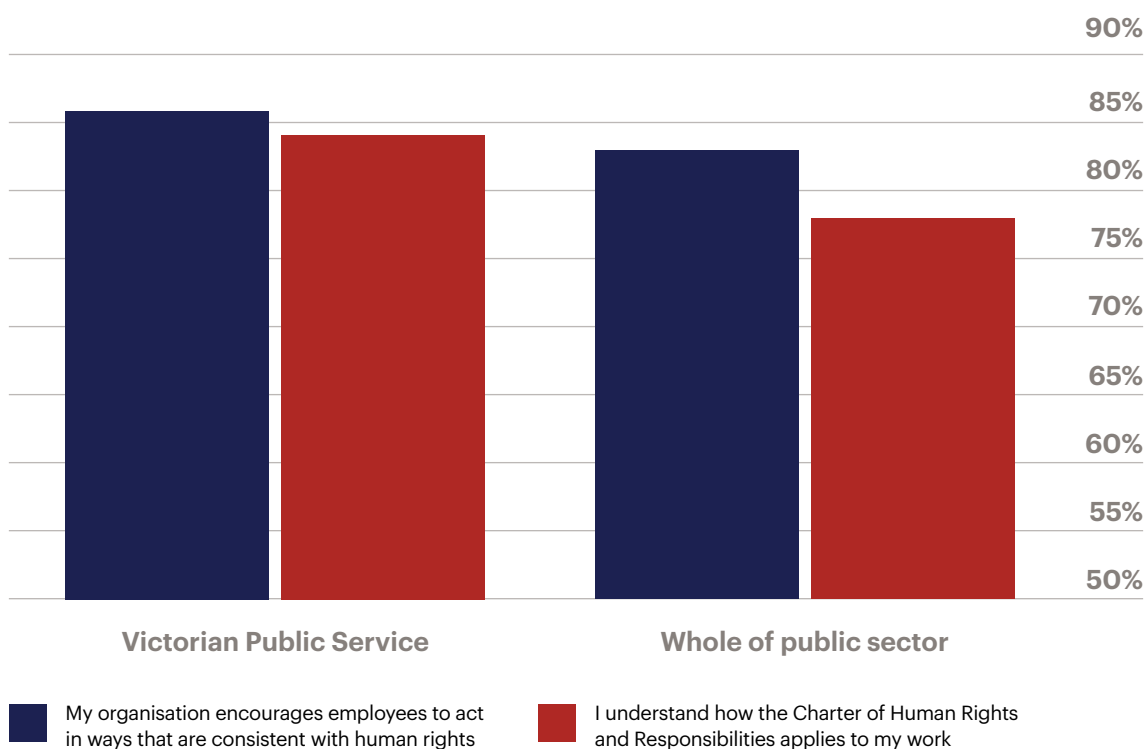
# The Charter and public authorities

A culture of human rights requires public authorities to understand their duties to respect, protect, promote and fulfil human rights. A human rights culture is a pattern of shared attitudes, values and behaviours that influence the policy-making, decisions and practices of government to uphold the human rights of all people.

Public authorities – including all staff who work in state government departments, agencies and local government – must give proper consideration to human rights when making decisions and act compatibly with human rights. This includes whether any decision or action lawfully limits human rights.

Human rights form part of the seven core public sector values which guide the ethics and behaviour of Victoria’s public servants. In 2022 the Victorian Public Sector Commission found most public servants agree that human rights are understood and applied in their organisation, continuing an upward trend across recent years.

## People Matter survey results



Members of the community have the right to complain about actions and decisions of public authorities under the Charter and seek remedies. Although the Commission doesn't handle complaints under the Charter,<sup>4</sup> we receive enquiries from people about their Charter rights.

In 2022 we noted a decrease in enquiries about Charter rights, likely linked to the easing of pandemic restrictions over the course of the year, with the pandemic declaration ending on 12 October 2022. However, there remains an upward trend in Charter enquires compared to the years immediately prior to the onset of the COVID-19 pandemic.

#### Charter rights enquiries

<b>2022</b>	<b>244</b>
<b>2021</b>	<b>840</b>
<b>2020</b>	<b>411</b>
<b>2019</b>	<b>136</b>
<b>2018</b>	<b>135</b>

4 The Victorian Ombudsman can seek to informally resolve or investigate complaints about administrative actions and decisions by public authorities. The Ombudsman can also conciliate and mediate individual complaints.



# Charter education

To assist public authorities in building a human rights culture and in acting compatibly with the Charter, the Commission's Charter Education Program<sup>5</sup> delivers tailored education across government departments, agencies, statutory authorities, local government and functional public authorities. These education services are designed in partnership with public authorities, enabling the content to specifically incorporate realistic workplace scenarios about applying the Charter in day-to-day roles.

In 2022 the Commission delivered 29 human rights education sessions to 388 participants. In addition, public sector staff completed 31,649 Charter e-learning modules. Our e-learning program introduces the public sector to their obligations under human rights laws.

## Case studies

### Centre for Mental Health Learning

The Commission partnered with the Centre for Mental Health Learning (CMHL), the central agency for development of the public mental health workforce in Victoria, to deliver human rights education for public sector mental health professionals. This was a unique opportunity to build the mental health sector's capability in its role promoting and protecting human rights. The audience comprised a broad range of mental health professionals, including clinical psychologists and social workers, specialist serious offender practitioners, mental health nurses and consumer advocates. Participants came from across Victoria, including Bendigo, Wodonga, Metro Melbourne and the Goulburn Valley.

This diverse mix provided an opportunity for participants to deepen their understanding of human rights for users of mental health services across the system. The right to privacy, the right to protection from cruel inhumane and degrading treatment, and freedom from all forms of discrimination were of particular relevance.

Participants reported benefits of the program included learning with a wide variety of sector professionals and developing a greater understanding of the breadth of human rights obligations across users' experience with mental health services. This session was the beginning of the partnership between CMHL and the Commission, with another two sessions scheduled in 2023.

5 The Charter Education Program is a multi-year project funded by the co-contributions of each government department and Victoria Police delivering a suite of education services to build human rights capability in the public sector.

## Office of the Public Advocate

Staff at the Office of the Public Advocate (OPA) are delegated the Public Advocate's decision-making powers under various Acts, including the *Guardianship and Administration Act 2019* and the *Medical Treatment Planning and Decisions Act 2016*, requiring them to make a range of decisions which may significantly impact the human rights of people with disability. Due to these responsibilities, OPA identified a need for tailored Charter training to ensure it was meeting its obligations consistently.

As part of its ongoing commitment to embed human rights in its practices, OPA engaged the Commission to co-facilitate a Charter Capability Program<sup>6</sup> for 15 of its staff. The Commission worked with OPA's Legal and Advocate Guardian teams to co-design the program and provided support to design fit-for-purpose decision frameworks for use within OPA.

The program, delivered to staff including Advocate Guardians, Medical Decisions and legal team members, emphasised the unique human rights considerations of Advocate Guardians' decision-making and the importance of human rights under the Guardianship and Administration Act, as well as upholding OPA's obligations under the Charter.

**'It was great to learn about the ways of promoting rights as well as limiting rights. The course has helped me to build my confidence to talk to my team and colleagues about the Charter.'** – Charter Capability Program participant

**'The more we use the Charter in our work, the more protected the represented person will be.'** – Charter Capability Program participant

**'Using the Charter improves the shaping of decisions of the staff at OPA, and furthermore will help with defending those decisions if necessary.'** – Charter Capability Program participant

**'Considering human rights encourages staff to stop and think about why they are making the decision and the impact on the individual and their family.'** – Charter Capability Program participant

**'Building this culture shows due diligence and that OPA are undertaking their role to uphold human rights in Victoria.'** – Charter Capability Program participant

<sup>6</sup> The Charter Capability Program is an iterative 4–5 part capability development program delivered by the Commission targeting managers and senior public sector staff, and aimed at deepening knowledge on rights and duties, and developing capability on how to apply human rights, manage risk and lead good human rights practice.

# Corrections Victoria

In 2022 the Commission delivered two intensive Charter Capability Programs to staff working at Corrections Victoria's Loddon Prison, the Metropolitan Remand Centre, and in the Security and Emergency Services Group (SESG)<sup>7</sup>.

Five staff leaders from each organisation attended one of the programs and gained access to Corrections Victoria's Human Rights Network Community of Practice. This program was iterative in nature and delivered over a period of 8–10 weeks. During the program, participants were able to discuss the difficulty of rapid decision-making required by prison staff, and identify supportive ideas and strategies to implement as a result.

**'It is important for Corrections staff to ensure that they talk about risks early and then they can have conversations about the outcomes of a 'grey area' before they happen.'** – Charter Capability Program participant

The program deepened participants' understanding of the Charter and how to champion human rights in the workplace – fostering knowledge and practice through cross-facility participation and collaboration.

Participants engaged strongly in the program, resulting in 81 per cent of post-program survey respondents reporting an increased understanding of the Charter, a 31 per cent increase from the pre-program survey.

<sup>7</sup> The SESG is Corrections Victoria's emergency response group.

# Appendix A

## Cases raising or considering the Charter

Attorney-General for the State of Queensland v Grant (No 2) [2022] QSC 252 (16 November 2022)

Azizi v DPP [2022] VSCA 71 (20 April 2022)

Bashour v Australia and New Zealand Banking Group Pty Ltd [2022] VSC 252 (20 May 2022)

Blue Cube Developments Pty Ltd v Von Risefer [2022] FCA 1193 (6 October 2022)

Brown v Corrections Victoria & Ors [2022] VSC 217 (3 May 2022)

Bruce v Victorian Workcover Authority (WorkSafe) (Human Rights) [2022] VCAT 945 (17 August 2022)

Bruce v Victorian Workcover Authority (WorkSafe) (Human Rights) [2022] VCAT 34 (17 January 2022)

Buonopane v RMIT University (Human Rights) [2022] VCAT 146 (10 February 2022)

Cartwright (Guardianship) [2022] VCAT 1089 (27 September 2022)

Cornish College - Exemption (Human Rights) [2022] VCAT 981 (1 September 2022)

Conrad John Corry v Australian Council of Trade Unions T/A ACTU [2022] FWC 288 (15 February 2022)

Council of the Law Society of New South Wales v Judah [2022] NSWCATOD 89 (11 August 2022)

Davidson v Director-General, Justice and Community Safety Directorate [2022] ACTSC 83 (21 April 2022)

Deng v Australian Capital Territory (No 3) [2022] ACTSC 262 (28 September 2022)

Donohue v Westin [2022] VSC 37 (9 February 2022)

DPP v Tirris [2022] VCC 1575 (16 September 2022)

Draper v Victorian Building Authority [2022] VSC 485 (24 August 2022)

Draper v Victorian Civil and Administrative Tribunal & Ors [2022] VSC 486 (24 August 2022)

DZ (a pseudonym) v Unison Housing Ltd [2022] VSC 249 (19 May 2022)

EJN v Mental Health Tribunal (Human Rights) [2022] VCAT 407 (19 April 2022)

‘EP1’ and Department of Families, Fairness and Housing (Freedom of Information) [2022] VICmr 164; (15 June 2022)

Erikson v Pollock [2022] VCC 1388 (1 September 2022)

Finding into Death with Inquest, Inquest into the passing of Veronica Nelson COR 2020 0021

Fazal v Victorian Legal Services Board (Legal Practice List) [2022] VCAT 893 (5 August 2022)

FLG v Mental Health Tribunal (Human Rights) [2022] VCAT 1439 (14 December 2022)

Grujic v The Secretary Department of Health (Review and Regulation) [2022] VCAT 1189 (17 October 2022)

Hanson v Director of Housing [2022] VSC 710 (18 November 2022)

Hobson v Commonwealth of Australia [2022] FCA 418 (14 April 2022)

Hunt v State of Queensland (Department of Agriculture and Fisheries) [2022] QIRC 162 (19 May 2022)

HYY (Guardianship) [2022] VCAT 97 (27 January 2022)



IEX (Guardianship) [2022] VCAT 1000  
 (6 September 2022)

Jamison (a pseudonym) v DPP [2022]  
 VCC 857 (26 May 2022)

JL v Mental Health Tribunal (No 2) [2022]  
 VSC 222 (6 May 2022)

Kafkias v Secretary to the Department of  
 Justice and Community Safety (Review and  
 Regulation) [2022] VCAT 578 (24 May 2022)

Kaplan (Guardianship) [2022] VCAT 6  
 (5 January 2022)

Keasey v Director of Housing [2022] VSCA  
 7 (2 February 2022)

Kyriazis v Victoria Police [2022] VSC 596  
 (6 October 2022)

Laming v Racing Victoria Ltd [2022] VSC  
 813 (19 December 2022)

Martin Green v Aldi Stores [2022] FWC  
 1197 (28 June 2022)

Melbourne Archdiocese Catholic Schools  
 Ltd (Emmanuel College) - Exemption (Human  
 Rights) [2022] VCAT 857 (11 August 2022)

Minogue v Falkingham [2022] VSCA 111  
 (14 June 2022)

MOT (Human Rights) (Corrected) [2022]  
 VCAT 84 (24 January 2022)

MR22 v Victorian Civil and Administrative  
 Tribunal [2022] VSC 426 (1 August 2022)

N37 and Queensland Police Service [2022]  
 QICmr 33 (29 June 2022)

Naik v Monash University (Human Rights)  
 [2022] VCAT 1353 (12 December 2022)

Paterson v Chief Commissioner of Police  
 (Review and Regulation) [2022] VCAT 903  
 (9 August 2022)

PCG v Mental Health Tribunal (Human  
 Rights) [2022] VCAT 932 (16 August 2022)

Pugwall Pty Ltd v Arthur McKenzie  
 Investments Pty Ltd [2022] VSCA 272  
 (9 December 2022)

QGMJ and Minister for Immigration,  
 Citizenship and Multicultural Affairs  
 (Migration) [2022] AATA 2314 (7 June 2022)

Quick v Transport Accident Commission  
 (TAC) (Human Rights) [2022] VCAT 622  
 (7 June 2022)

Re: Cobham Aviation Services Australia Pty  
 Ltd & Ors [2022] QIRC 326 (19 August 2022)

RED [2022] VMHT 2 (1 February 2022)

Rowson v Department of Justice (No 2)  
 [2022] VSC 382 (1 July 2022)

Sandy v Queensland Human Rights  
 Commissioner [2022] QSC 277 (9 December  
 2022)

Secretary of the Ministry of Health v The  
 New South Wales Nurses and Midwives'  
 Association [2022] NSWSC 1178 (28  
 September 2022)

Seeing Machines Limited (Human Rights)  
 [2022] VCAT 214 (3 March 2022)

Smit v Lyons & Ors [2022] VSC 274  
 (27 May 2022)

Smit & Yemini v Simon [2022] VMC 29  
 (12 September 2022)

SODJCS v Davidson (a pseudonym) (Review)  
 [2022] VCC 2163 (5 December 2022)

SQH v Scott [2022] QSC 16 (4 March 2022)

The Police Federation of Australia (Victoria  
 Police Branch) T/A The Police Association  
 of Victoria v Victoria Police/Chief  
 Commissioner of Police [2022] FWC 1862  
 (26 July 2022)

Thompson v The Secretary, Department of  
 Health (Review and Regulation) [2022] VCAT  
 504 (11 May 2022)

Thurin v Krongold Constructions (Aust) Pty  
 Ltd [2022] VSCA 226 (20 October 2022)

Tran v Office of the Chief Parliamentary  
 Counsel (Review and Regulation) [2022]  
 VCAT 61 (19 January 2022)

Tsikos v Austin Health [2022] VSC 174  
 (11 April 2022)

815 Truemans Cabin Hire Pty Ltd v The  
 Secretary, Department of Health (Review and  
 Regulation) (Corrected) [2022] VCAT 1187  
 (17 October 2022)

United Firefighters Union of Australia  
 - Victorian Branch v Victorian Equal  
 Opportunity and Human Rights Commission  
 (Review and Regulation) [2022] VCAT 1193  
 (17 October 2022)

VIJ (Guardianship) [2022] VCAT 1310  
 (15 November 2022)

Walles v VLSC [2022] VSC 435  
 (8 August 2022)

Waratah Coal Pty Ltd v Youth Verdict Ltd  
 & Ors (No 6) [2022] QLC 21 (25 November  
 2022)

Wellington v Surf Coast SC (Review  
 and Regulation) [2022] VCAT 942  
 (19 August 2022)

Wendy Robinson and Others v Metro  
Trains Melbourne Pty Ltd T/A Metro Trains  
Melbourne [2022] FWC 1614 (21 July 2022)

Wentworth Hair Salon v The Secretary,  
Department of Health (Review and  
Regulation) [2022] VCAT 1298 (10 November  
2022)

Westbourne Grammar School (Human  
Rights) [2022] VCAT 278 (31 March 2022)

Wood v The King & Anor [2022] QSC 216  
(13 October 2022)

Woodleigh School (Human Rights) [2022]  
VCAT 244 (17 March 2022)

WYU [2022] VMHT 3 (2 February 2022)

Yarran v Magistrates' Court of Victoria [2022]  
VSC 531 (9 September 2022)

Zaric & Ors v City of Greater Dandenong  
[2022] VSC 680 (7 December 2022)



# Contact us

Enquiry Line	1300 292 153
Fax	1300 891 858
NRS Voice Relay	1300 555 727 then quote 1300 292 153
Interpreters	1300 152 494
Email	<a href="mailto:enquiries@veohrc.vic.gov.au">enquiries@veohrc.vic.gov.au</a>
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