



**Victorian Equal Opportunity
& Human Rights Commission**

Charter reform discussion paper

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Acknowledgement of Country

The Victorian Equal Opportunity and Human Rights Commission acknowledges Aboriginal and Torres Strait Islander People as the First Peoples and Traditional Custodians of the land and waterways upon which our lives depend.

Our office is located on the lands of the Wurundjeri Woiwurrung People of the Kulin Nation. We acknowledge and pay our respects to Ancestors of this Country, Elders past and present, and all First Peoples.

We recognise that First Peoples are disproportionately affected by prejudice and hate. We acknowledge the ongoing harms that colonisation causes to First Peoples communities, including entrenched and systemic racism.

We honour the tireless efforts of generations of First Peoples who have stood against racism and advanced the values of freedom, fairness and equality. It is through the continuing efforts of First Peoples leaders and communities that language, lore, custom and culture continue and flourish.

We commit to working with First Peoples to try to prevent historical injustices from continuing, including through Treaty and truth-telling.



Foreword

Dear Attorney-General

On behalf of the Victorian Equal Opportunity and Human Rights Commission (the Commission), I am pleased to present our discussion paper on the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter).

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

A cost-of-living crisis has seen many of our most marginalised communities struggling to make ends meet. Conflicts overseas have led to increased hate speech on our streets 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.

Through this, the Charter has continued to make Victoria a fairer, safer, more inclusive place to live. It has helped ensure rights for every person in Victoria and provided a framework for decision-makers, while also recognising that everyone in the community has responsibilities to respect the rights of their fellow citizens.

However, there is always room for improvement.

At the time the Charter was passed into law by Parliament in 2006, the state government acknowledged that "Victoria's experience of a formal human rights instrument is only just beginning" and that the community may determine that further rights – including economic, social and cultural rights – should be protected in the future.¹

There have been two statutory reviews of the Charter since its commencement, in 2011 and 2015. These made legislative and policy recommendations to make the Charter more accessible, effective and practical. Despite these reviews, the Charter has not been substantially amended since it commenced operation in 2007.

Meanwhile, updates to the ACT's *Human Rights Act 2004* (ACT) and provisions of Queensland's *Human Rights Act 2019* (Qld) reflect many of the reforms that have been recommended for the Victorian Charter. At the same time, the final report of the federal Parliamentary Joint Committee on Human Rights' 2024 Inquiry into Australia's Human Rights Framework recommended the introduction of a national human rights Act and included detailed analysis of a draft Bill that would reflect many of the changes recommended for the Charter.

This discussion paper aims to add to that momentum, summarising the weaknesses of the current Charter and outlining reforms that would meet the needs of modern-day Victoria.

It is my hope that the state government will come on this journey with us to ensure the rights and freedoms of all Victorians.

Sincerely



Ro Allen
Victorian Equal Opportunity
and Human Rights Commissioner

¹ Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2006, 1291 (Rob Hulls, Attorney-General).

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.

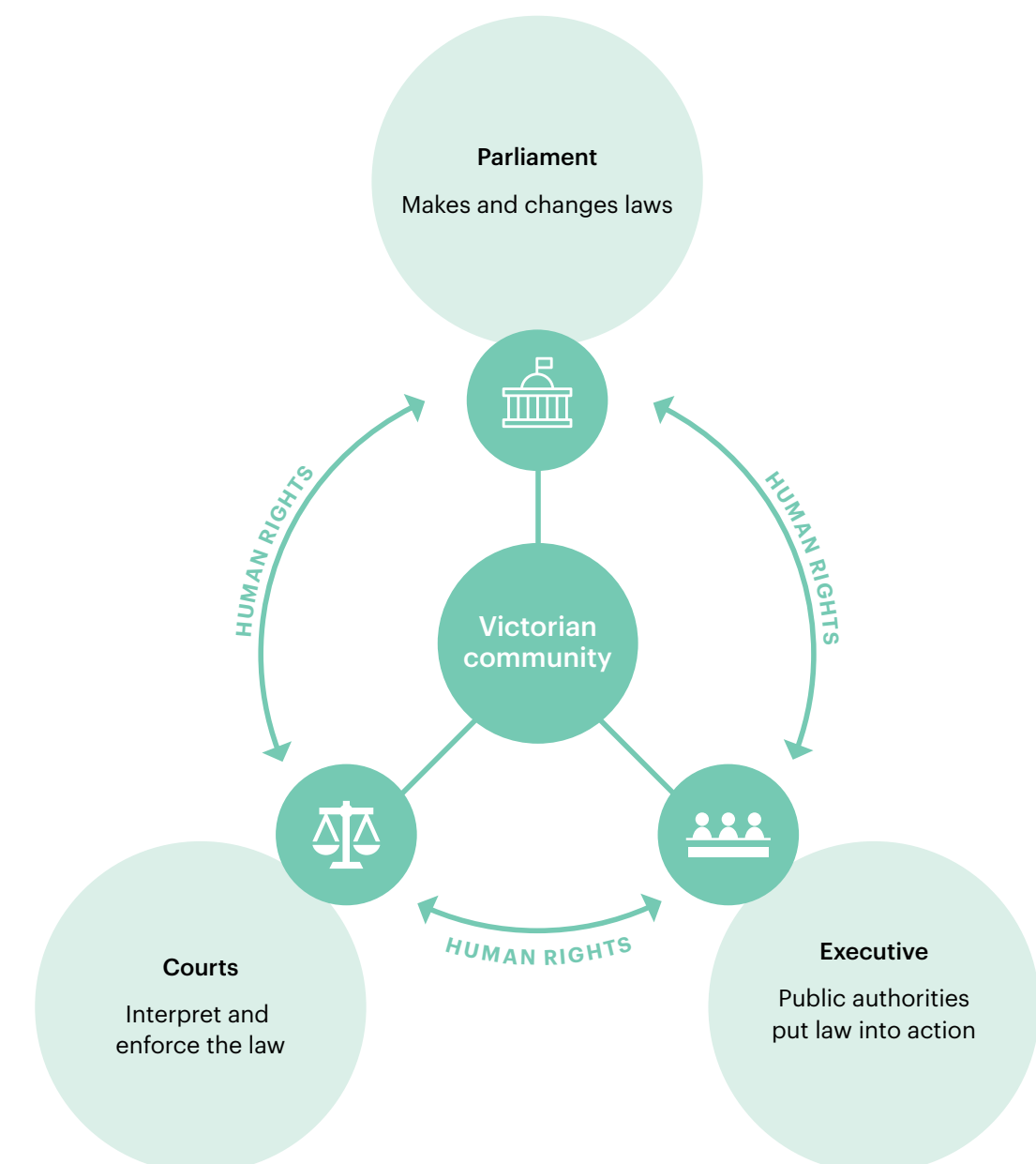
In 2006, the Charter enshrined 20 civil, political and cultural rights into Victorian law. These rights reflect the fundamental values of freedom, equality, respect and dignity. These values are vital for our wellbeing and our ability to live a dignified life where we are treated fairly and can genuinely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



The Charter's dialogue model of rights

The Charter creates a dialogue model of human rights protection – a constructive and continuous conversation about human rights – between the executive, the Parliament, the courts and the Victorian community. The model is designed to ensure human rights are considered in development of laws and policies, in 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 human rights



Current Charter rights

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

Charter responsibilities

The Charter places responsibilities on the three arms of government – the executive, the Parliament, and courts and tribunals – as well as 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 Parliament.

	Parliament of Victoria The Parliament of Victoria must assess all new laws to see whether they are consistent with human rights. Equipped with a law’s statement of compatibility and reports from the Scrutiny of Acts and Regulations Committee (SARC), Parliament assesses which human rights are impacted by a law, if any, and whether the anticipated impact on human rights is reasonable and justified.
	The Executive and public authorities The executive branch of government identifies policy objectives and drafts the majority of proposed laws, including those laws’ statements of compatibility. Public authorities such as 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 unlawfulness under the Charter may be brought alongside another legal claim.
	Courts and tribunals Courts and tribunals must interpret every Victorian law in a way that is compatible with human rights so far as it is possible to do so consistently with the purpose of the law. They must also comply with the Charter when acting in an administrative capacity,² and in some circumstances when acting judicially, to the extent that they have functions under the Charter.³

2 Charter of Human Rights and Responsibilities Act 2006 (Vic) s 4.
3 Ibid s 6(2)(b).

Twenty years of achievement



Twenty years of achievement

Since its commencement, the Charter has benefited all people in Victoria.

New laws have been more considered and equitable, ensuring a better balance between government regulation and protection of the rights of Victorians. Public authorities have incorporated human rights into their everyday dealings with the community, making decisions fairer and more transparent. If someone's rights have been impacted by a breach of the Charter, they can raise this in a court or tribunal if they have grounds for another claim.

The Charter has made a genuine difference to people's lives.

One of the distinctive features of the Victorian model is that it is a harm-reduction tool, with much of its impact occurring before a dispute arises, through better decision-making.

In making laws, the Charter provides a mechanism for Members of Parliament and the community to consider the human rights implications of new laws and it can assist in positive law reform.

Under the Charter, every Bill introduced into Parliament must be accompanied by a statement outlining the Bill's compatibility with human rights. SARC is also tasked with considering all Bills and reporting to Parliament on whether the Bills are compatible with human rights. Organisations and the general public can make their own submissions on a Bill to SARC during the review process.

Requirements such as statements of compatibility and review by SARC are key achievements of the Charter, as they show consideration of human rights at the policy-development stage that minimises laws which are incompatible with the Charter.

In the administration of laws, the Charter provides public authorities with a framework to make decisions through a human rights lens so that outcomes are fairer.

When laws are interpreted by courts, parties can argue that they should be interpreted in line with Charter rights.

The Charter has had a positive impact in countless instances from the making of laws to the administration of laws through public authorities to decisions by courts in interpreting those laws.

Charter impact on lawmaking

Case study: Voluntary assisted dying

In 2017, Victoria became the first Australian state to legislate voluntary assisted dying.

The statement of compatibility for the Voluntary Assisted Dying Bill 2017 noted that it promoted a number of Charter rights, including the rights to privacy and to liberty and security of person, as well as the presumption of innocence of medical professionals, by allowing Victorians suffering a terminal illness in very limited circumstances to choose to end their life according to their own preferences.⁴

The Charter was a powerful tool for parliamentarians during the debate on the Bill, providing structure and substance to some of the more controversial aspects. For instance, parliamentarians in favour of the Bill argued that supporting voluntary assisted dying is a human rights issue, allowing people the choice to die with dignity under the safest and most rigorous framework possible.⁵ Others expressed reservations regarding the safeguards surrounding the Bill, noting that the statement of compatibility did not expressly discuss whether the Bill limited the "right not to be arbitrarily deprived of life".⁶

The result was a law that balances competing human rights considerations, with safeguards at every stage of the process.

4 Victoria, *Parliamentary Debates*, Legislative Assembly, 21 September 2017, 2943 (Jill Hennessy MLA, Minister for Health).

5 Victoria, *Parliamentary Debates*, Legislative Council, 31 October 2017, 5420 (Gavin Jennings MLC, Special Minister of State).

6 Victoria, *Parliamentary Debates*, Legislative Assembly, 2 November 2017, 5693 (Richard Dalla-Riva MLC).

Case study: Birth certificate reform

Following years of advocacy from the trans and gender diverse community, Parliament removed the need for Victorians to undergo sex-affirmation surgery in order to apply to change their sex on their birth registration.

Those in support of the reform argued that it promoted the Charter rights of trans and gender diverse Victorians, including the right to equality, the right to protection of families and children, and the right to privacy, particularly in relation to not inappropriately medicalising a person's sex or gender identity.⁷

Those in opposition to the reform argued that the Bill risked infringing the right to equality, citing concerns about women-only spaces and the rights of children.⁸ The statement of compatibility addressed this by noting that “the government takes concerns about women's safety seriously but makes it very clear that these concerns are not supported by the evidence”.⁹

SARC noted the competing Charter rights, seeking further clarification from the Attorney-General on the right to equality and non-discrimination.¹⁰ In particular, SARC enquired about the existing exceptions and special-measures provisions under the *Equal Opportunity Act 2010* (Vic) (Equal Opportunity Act) that permit discrimination on the basis of sex and whether those exceptions would continue to operate.¹¹ Examples provided included competitive sporting activities, as well as religious organisations and educational institutions.¹²

The Attorney-General responded that “[e]xcluding trans and gender diverse Victorians from such services and spaces is already discrimination under the Equal Opportunity Act on the basis of their identified sex – the Bill does not change the operation of the relevant provisions”.¹³

This addressed concerns about the Bill using a rights-based lens, showing that the *Births, Deaths and Marriages Registration Act 1996* sought to balance competing Charter rights.

This ultimately led to a fairer, non-discriminatory and less intrusive process for trans and gender diverse Victorians to have their birth certificates reflect their identity.

- 7 Victoria, *Parliamentary Debates*, Legislative Assembly, 19 June 2019, 2262 (Jill Hennessy MLA, Attorney-General).
- 8 Victoria, *Parliamentary Debates*, Legislative Council, 27 August 2019, 2663 (Edward O'Donohue MLC).
- 9 Victoria, *Parliamentary Debates*, Legislative Assembly, 19 June 2019, 2262 (Jill Hennessy MLA, Attorney-General) 2267.
- 10 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest* (Digest No 9 of 2019, 13 August 2019) 3.
- 11 Ibid 8.
- 12 Ibid 10.
- 13 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest* (Digest No 11 of 2019, 10 September 2019) 24.

Case study: COVID-19 police powers

In response to the COVID-19 pandemic, the Victorian Government introduced the COVID-19 Omnibus (Emergency Measures) Bill 2020. If passed in its original form, the Bill would have allowed authorised officers to detain people based on the officers' belief about what the person might do.¹⁴

SARC found that many of the proposed measures raised Charter-related issues.¹⁵ For instance, SARC noted that the proposal to place youth detainees in solitary confinement for 14 days to mitigate the impacts of COVID-19 raised the Charter rights of acting in the best interests of children, the right to life, cultural rights and the right not to be treated in a cruel, inhuman or degrading way.¹⁶ SARC wrote to the Premier seeking assurances that children would not be isolated for more than 14 days.¹⁷

The most significant amendments to these laws occurred when the government sought to expand and extend the operation of emergency powers in August 2020. In the first instance, the Bill sought a 12-month extension to the use of emergency powers¹⁸ and to expand the pool of authorised officers, giving them new powers to pre-emptively detain people.¹⁹

There was significant public debate and concern about the human rights implications of these provisions. Submissions to SARC argued that the proposed amendments were not compatible with Charter rights to freedom of movement and the right to liberty and security of person.²⁰

Due to these concerns, the law was passed in an amended form that reflected a more proportionate limitation of Charter rights. These rights included the right to life, protection from cruel, inhuman and degrading treatment, freedom of movement, freedom of association and protection of families and children.

The resulting changes to the original Bill included:

- a limited extension of the state of emergency, with greater transparency of executive decision-making and added safeguards²¹
- removal of the proposed new powers to allow authorised officers to pre-emptively detain people from the Bill²²
- a reduction in the proposed pool of people who could exercise emergency powers under the *Public Health and Wellbeing Act 2008*.²³

These amendments resulted in more rights-compatible outcomes while still achieving the primary purpose of the Bill.

- 14 COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Bill 2020 (Vic) s 252.
- 15 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest* (Digest No 5 of 2020, 2 June 2020) 27.
- 16 Ibid 30.
- 17 Ibid 33.
- 18 COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Bill 2020 (Vic) pt 4.
- 19 Ibid s 252.
- 20 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest* (Digest No 9 of 2020, October 2020) 60.
- 21 COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020 (Vic) pt 4.
- 22 For instance, s 250(a)(2) outlined that the Chief Health Officer must not authorise an authorised officer “to exercise any of the emergency powers” including the power to detain.
- 23 COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020 (Vic) s 250.



Charter impact on decisions by public authorities

Case study: Ombudsman’s investigation into West Gate Tunnel Project

After concerns around the ‘forever chemical’ PFAS dumped near residential areas during the building of the West Gate Tunnel, the Victorian Ombudsman launched an investigation into the Environmental Protection Agency’s (EPA) approval of environmental management plans (EMPs) for sites to receive project spoil.²⁴

A main focus of the investigation was whether the EPA had acted compatibly with, and given proper consideration to, human rights identified in the Charter.²⁵ Relevant rights included the right to life, protection of families and children, right to participate in the conduct of public affairs, cultural rights and property rights.²⁶

The Ombudsman found that “[t]he available evidence does not suggest the EPA properly considered the [Charter] when approving the EMPs, with the Executive Director acknowledging it was considered in a ‘cursory’ way”.²⁷

The Ombudsman recommended that the EPA develop and implement a Charter assessment procedure.²⁸ The EPA then engaged the Commission to assist in a comprehensive review of the agency’s Charter use in its decision-making process.²⁹

This shows how the Charter operates to hold government agencies to account and how oversight findings can lead public authorities to seek guidance on ways to operate in line with Charter rights.

24 Victorian Ombudsman, *Investigation into Environment Protection Authority decisions on West Gate Tunnel Project spoil disposal* (May 2022).

25 Ibid 9.

26 Ibid 15.

27 Ibid 50.

28 Ibid 72.

29 Ibid 74.

Case study: Coronial inquest into death of Aunty Tanya Day

The coronial inquest into the passing of Yorta Yorta woman Tanya Day broke new ground as the first inquest to consider whether systemic racism had contributed to the cause and circumstances of a death.³⁰

The Coroner interpreted her fact-finding function consistently with the Charter rights to life, equality and humane treatment when deprived of liberty. She found that, in order to discharge her duty to conduct a comprehensive, thorough and effective investigation, she would assess the evidence in the inquest through the lens of systemic racism.³¹

This inquest demonstrates how Charter rights can inform the content of a coronial process, including the Coroner’s decision on the scope of an inquest.

It also highlights the urgent need for all public authorities, whether they are police, transport providers or hospitals, to provide culturally safe and trauma-informed care for First Peoples.

The Coroner found that the decision of V/Line “to call for police rather than pursue other options (was) influenced by her Aboriginality”³² and that Victoria Police had not treated Tanya “with humanity and respect for the inherent dignity of a human person as required by the Charter”.³³ The Coroner recommended that V/Line and Victoria Police request the Commission to conduct a review of the compatibility of their training materials with the Charter.³⁴

30 *Inquest into the death of Tanya Louise Day* (Coroners Court of Victoria, Deputy State Coroner Caitlin English, 9 April 2020).

31 Ibid 20.

32 Ibid 42.

33 Ibid 90.

34 Ibid 108.

Case study: Use of restraint and seclusion in mental health services

The Charter provided further impetus to rethink restraint³⁵ and seclusion³⁶ practices for the Department of Health in relation to mental health services.

A review of procedures conducted by the Department of Health showed significant efforts had been made to reduce the use of restraint and seclusion in Victoria based on Charter protections.³⁷

The relevant rights in assessing progress on restraint and seclusion include the right to life, protection from cruel, inhuman and degrading treatment, protection of families and children, right to liberty and security of person, and humane treatment when deprived of liberty.

Actions that the Department of Health took to comply with the Charter relating to restraint and seclusion included:

- active participation in national projects including the National Safety Priorities Action Plan, which aimed to reduce and eliminate the use of restraint and seclusion in public mental health services where possible
- review of guidelines on seclusion published by the Chief Psychiatrist in 2006
- development and rollout of statewide training and education programs
- a clinical audit program.³⁸

While these actions had some impact, incidences of restraint and seclusion have continued in Victoria.

The Royal Commission into Victoria’s Mental Health System recommended that the Victorian Government act immediately to reduce the use of seclusion and restraint in mental health and wellbeing service delivery, with the aim of eliminating these practices within 10 years.³⁹

Continuing to use a rights-based lens through the Charter will be crucial to achieving this, particularly if the Charter receives much-needed reforms, as discussed later in this paper.

35 Under s 227(1) of the *Mental Health Act 2014* (Vic), “bodily restraint” means “the physical or mechanical restraint of a person who is being provided with treatment or care at an authorised hospital”.

36 Under s 212(1) of the *Mental Health Act 2014* (Vic), “seclusion” means “the confinement of a person who is being provided with treatment or care at an authorised hospital by leaving the person at any time of the day or night alone in a room or area from which it is not within the person’s control to leave”.

37 Victorian Equal Opportunity and Human Rights Commission, *Talking rights: compilation report* (May 2011) 27.

38 Ibid.

39 *Royal Commission into Victoria’s Mental Health System* (Final Report, February 2021) Recommendation 54.

Charter impact on court decisions

Case study: DPP v Pottinger

In 2010, the County Court was asked to consider the rights of the child in the Charter in a matter involving a victim/survivor of sexual assault providing evidence via a video recording.⁴⁰

The Charter provides that every child has the right, without discrimination, to such protection as is in the child's best interests and is needed by the child by reason of being a child.

Under the *Criminal Procedure Act 2007*, where complainants in sexual offence and assault cases are children under the age of 18 their evidence may be given at a special hearing and recorded as an audiovisual recording.⁴¹ This provision can only be used if the evidence is provided within three months from the date the accused is committed for trial, unless exceptional circumstances exist.⁴²

In this case, the Court was unable to comply with the three-month timetable for a special hearing due to unavailability of court resources. The Director of Public Prosecutions made an application before the Court for an extension of time on account of exceptional circumstances.

The Court was asked that when it interprets "exceptional circumstances" it have regard to the interpretive obligation in section 32 of the Charter to interpret the provision in a manner that is compatible with child complainants' rights under the Charter.

The Court found that exceptional circumstances did exist, having regard to the Charter, and the child complainant was able to provide their evidence at a special hearing.⁴³

This is an example of the Charter leading to a more robust and rights protective outcome.

Case study: Slattery v Manningham City Council

Mr Slattery was a person with multiple disabilities who resided in the City of Manningham.

Over the course of a decade, Mr Slattery made a number of written and verbal complaints to Manningham City Council on a range of issues. In April 2009, the Council passed a motion declaring Mr Slattery a prohibited person "in order to uphold public safety" and "provide a safe working environment". This declaration banned Mr Slattery from accessing any building owned, occupied or managed by the Council.

Mr Slattery brought a claim of disability discrimination to the Victorian Civil and Administrative Tribunal (VCAT), arguing that Manningham City Council had placed an unjustifiable limit on his human rights under the Charter.⁴⁴

VCAT found that the Council had breached Mr Slattery's right to participate in public affairs and freedom of expression, and his freedom from discrimination.⁴⁵

In making this decision, VCAT used the interpretation clause of the Charter – that laws must be interpreted in a way that is compatible with human rights so far as it is possible to do so consistently with their purpose – to interpret the definition of disability, namely, that it was sufficient if the evidence established that the relevant behaviour was symptomatic of disability "to at least a significant extent".⁴⁶

The findings highlight how the Charter complements other laws such as the Equal Opportunity Act to assist courts in reaching outcomes using rights-based principles.

40 *DPP v Brian Pottinger* [2010] VCC unreported.

41 *Criminal Procedure Act 2007* (Vic) s 370.

42 *Ibid* s 371.

43 Victorian Equal Opportunity and Human Rights Commission, *Putting principle into practice: VEOHRC submission to the four-year review* (1 July 2011) 171.

44 *Slattery v Manningham City Council (Human Rights)* [2013] VCAT 1869, 12.

45 *Ibid* 161–165.

46 *Ibid* 83.

Case study: Certain Children v Minister for Families and Children

Following damage to a youth justice centre, the Victorian Government set up a new youth justice centre at the maximum-security adult Barwon Prison and transferred children as young as 15 years old. The children were subjected to extended solitary confinement and regular handcuffing, and denied education.

A number of First Nations children took legal action using the Charter and other laws to challenge their transfer to the prison.⁴⁷ In response, the Victorian Government agreed to remove all First Peoples children from the adult prison.

A number of non-Aboriginal children then brought a similar legal action challenging the decision to set up the unit in the adult prison and transfer children there.

Both the Supreme Court and the Court of Appeal ruled that the decision was unlawful because the Minister had failed to properly consider the children's rights under the Charter, including the right to humane treatment and the right to protection of children as is in their best interests.⁴⁸

When the Minister made a subsequent decision that kept the children in the adult prison, there was a final legal challenge using the Charter and other laws.

The Supreme Court again ruled that the government's actions breached the children's rights to humane treatment in detention and protection as is in their best interests. The Court ordered that the Minister stop detaining the children at the prison and all children were transferred back to existing youth justice centres.⁴⁹

Certain Children provides the Victorian Government and public authorities with practical guidance on the Charter and the legal standards expected to be met when dealing with children in the corrections system.

47 *Certain Children by their Litigation Guardian Marie Brigid Arthur v Minister for Families and Children & Ors* [2016] VSC 796, 52–54.

48 *Ibid* 230; *Minister for Families and Children & Ors v Certain Children by their Litigation Guardian Sister Marie Brigid Arthur & Ors* [2016] VSCA 343, 105.

49 *Certain Children v Minister for Families and Children (No 2)* [2017] VSC 251, 588.



The need for Charter reform



The need for Charter reform

As Victoria has changed and grown as a society, we have learned much about the Charter's operation. There have been two independent reviews that have provided thoughtful and meaningful recommendations to make the Charter operate more efficiently and effectively.⁵⁰

In 2010, Professor George Williams, who chaired the Victorian Human Rights Consultation Committee that led to the introduction of the Charter, wrote:

These mandatory reviews demonstrate how the Charter is not a one-off piece of legislation designed to set down a static set of human rights in Victorian law. The Committee viewed the Charter as only the first step in the better protection of human rights in the State.⁵¹

Numerous other reports and inquiries have echoed these calls for similar reform including the Yoorrook Justice Commission's *Yoorrook for justice: report into Victoria's child protection and criminal justice systems*.⁵²

To date, none of the recommendations requiring legislative change have been implemented.

Meanwhile, other Australian jurisdictions have made progress beyond the Victorian human rights framework, notably Queensland and the ACT. The Commission has heard from the legal profession, the public sector and members of the broader public that, after 20 years with no significant reform, it is time for the Charter to evolve in order to remain relevant, effective and responsive to the ever-changing needs of our diverse community.

The first part of this section outlines the rights that need to be added to the Charter to ensure protected rights and state obligations, including economic, cultural and social rights, are clearly laid out in one place in a way that is accessible to everybody. The second part of this section focuses on the operational reforms of the Charter the Commission considers necessary so that the Charter is an effective and efficient tool for people to use when their rights are breached.

These reforms will better protect the rights of all people in Victoria, promote better understanding of those rights and empower people to seek justice if their rights are violated.

50 See Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Review of the Charter of Human Rights and Responsibilities Act 2006* (2011) and Michael Brett Young, *From commitment to culture: the 2015 review of the Charter of Human Rights and Responsibilities Act 2006* (2015).

51 Williams, 'The Victorian Charter of Human Rights and Responsibilities', *Future Justice* (2010), 136–150 <https://futureleaders.com.au/book_chapters/pdf/Future_Justice/George_Williams.pdf>.

52 Yoorrook Justice Commission, *Yoorrook for justice: report into Victoria's child protection and criminal justice systems* (August 2023) 96.

Additional rights

The Charter should reflect the interests and wishes of the Victorian community by protecting all human rights that the community recognises as fundamental, as well as the treaties that have been ratified by Australia as part of our country's international obligations.

In its current form, the Charter predominantly protects civil and political rights such as the right to privacy, freedom of expression and protection from torture. These rights arise from the *International Covenant on Civil and Political Rights* (ICCPR). Some Charter rights, such as the rights to a cultural life and protection of families and children, are reflected in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) as well as the ICCPR. However, there are core economic, social and cultural rights that are fundamental to people's everyday lives, including rights relating to health, education and housing, that are not included in the Charter.

While some of these economic, social and cultural rights have been recognised to some extent across a patchwork of other state laws, those laws are not always clear or enforceable. Other rights are not protected at all and leave many people in Victoria without basic legal protections.



Although human rights have been put into separate international covenants, the distinction between civil and political rights on one hand, and economic, social and cultural rights on the other, is largely artificial. This is because all human rights are considered indivisible and interdependent.⁵³ These rights should be clearly laid out in one place and accessible to anyone who needs them – whether it be people navigating the healthcare system, students trying to receive an education or families trying to access housing.

By expressly protecting economic, social and cultural rights in addition to civil and political rights, the Charter would reflect the obligations Australia has under the seven core international human rights treaties to which it is a party. Currently Victorians must rely on limited and complex complaint mechanisms under international law which allow individuals to make complaints to a United Nations treaty body whose decisions are not enforceable. Victorians will only receive the full benefit of these rights when these obligations are embedded in domestic law.

Some obligations arising from economic, social and cultural rights are immediately realisable, while others are subject to ‘progressive realisation’. This term recognises that full achievement of economic, social and cultural rights will require both immediate and long-term action, and will be dependent on growing the resources that government makes available. This principle is outlined in the ICESCR and requires every state to take steps “to the maximum of its available resources” with a view to progressively achieving the full realisation of these rights, including through legislative measures.⁵⁴

The limitations provision within section 7(2) of the Charter takes into account factors such as the nature of the right, the nature and extent of the limitation, and any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.⁵⁵ This would allow the government to phase in the implementation of any policies required to comply with these fundamental economic, social and cultural rights.

It is important to note that rights may be lawfully limited in certain circumstances. This includes where reasonable limits can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.⁵⁶ Furthermore, public authorities are not considered to have acted unlawfully where another law, such as a federal law, means the public authority could not reasonably have acted differently or made a different decision.⁵⁷

The protection of economic, social and cultural rights in the Charter would reflect the fundamental needs of people in modern Victoria.

53 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, UN Doc A/CONF.157/23 (12 July 1993) pt I para 5.

54 *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 2(1).

55 Charter s 7(2).

56 Ibid.

57 Ibid s 38(2).

Right to health

Lack of access to a basic standard of healthcare can have devastating consequences, particularly for already marginalised and disadvantaged communities.

The right to health in article 12(1) of the ICESCR protects the right of all people to enjoyment of the highest attainable standard of physical and mental health.⁵⁸ The inclusion of a right to access health services was part of the reform recommendations of the Australian Human Rights Commission in its *Free & equal* position paper relating to the development of a federal human rights Act,⁵⁹ the federal Parliamentary Joint Committee on Human Rights’ recommendation in its report on the Inquiry into Australia’s Human Rights Framework⁶⁰ and the final report of the Yoorrook Justice Commission.⁶¹

The right to health plays a vital, interconnected role in social participation, wellbeing and satisfaction, and ultimately allows a person to lead a fulfilling life.

While this right is not a right to be healthy, it does contain both freedoms and entitlements relating to health.⁶² The freedoms encompass the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference from torture, non-consensual medical treatment and experimentation.⁶³

Within Australia, the right to health has been partially enshrined in Queensland’s Human Rights Act.⁶⁴ Section 37(1) of that Act provides that every person has the right to access health services without discrimination. Section 37(2) provides that a person must not be refused emergency medical treatment which is immediately necessary to save the person’s life or to prevent serious impairment to the person. This provision applies to developing laws, policies and decisions that relate to health services for particular groups including First Peoples, people with disabilities, women and children.

While the Queensland protections focus on non-discrimination and equality, a right to health within the Victorian Charter could create a more comprehensive protection. In adopting the full right to health, as obliged by the ICESCR, decision-makers would need to take immediate and positive steps to uphold the right to health by working to provide the preconditions to a healthy life (such as healthy food and nutrition, housing, access to safe and potable water, safe working conditions and adequate sanitation).⁶⁵

58 *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(1).

59 Australian Human Rights Commission, *Free & equal position paper: a human rights act for Australia* (2022) 16.

60 Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework, Final Report* (2024) at 115.

61 Yoorrook Justice Commission, *Yoorrook for justice*, Recommendation 7.

62 *The right to health*, Office of the United Nations High Commissioner for Human Rights, Fact Sheet No 31 (June 2008) 3 <<https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-31-right-health>>.

63 Committee on Economic, Social and Cultural Rights, *General Comment No 14: The right to the highest attainable standard of health*, 22nd Session, UN Doc E/C.12/2000/4 (11 August 2000) 8.

64 *Human Rights Act 2019* (Qld) s 37.

65 Committee on Economic, Social and Cultural Rights, *General Comment No 14: The right to the highest attainable standard of health*, 22nd Session, UN Doc E/C.12/2000/4 (11 August 2000).

The right to health provides a framework for healthcare from a human-needs perspective. While some aspects of this right are already mirrored in the Charter,⁶⁶ incorporating a specific right to health would provide important legal safeguards for the rights of people with health conditions and disabilities.

Notably, the right to health would encompass the right of people with disabilities to equitable access to health services, as recommended by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.⁶⁷

In addition, a right to health in the Charter would inform the development of legislation and government policy. This would improve conditions within public healthcare facilities and ensure greater fairness and adherence to human rights, contributing to the Department of Health’s vision that Victorians are the healthiest people in the world.⁶⁸



66 For example, the right in s 10(c) to not be subjected to medical or scientific experimentation or treatment without full, free and informed consent.

67 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) Recommendation 4.9.

68 Victorian Department of Health, *Strategic Plan 2023–27 (2024 update)* 6.

Right to housing

Everyone deserves a place to live in peace, dignity and security. However, the right to housing is not yet included in the Charter.

The Commission has long advocated for a right to housing.⁶⁹ Housing is essential to human dignity and wellbeing, and is a crucial factor in addressing social and economic disadvantage.

Under international human rights law, the right to housing is encapsulated by the right to an adequate standard of living. The protection of the right to an adequate standard of living is contained in article 25 of the *Universal Declaration of Human Rights*,⁷⁰ article 11 of the ICESCR,⁷¹ the Australian Human Rights Commission’s *Free & equal* report⁷² and the federal Parliamentary Joint Committee on Human Rights’ report on the Inquiry into Australia’s Human Rights Framework.⁷³

The Commission considers that a right to housing, as part of the recognition of a broader right to an adequate standard of living, would be appropriate and effective at a state level. This is because of the oversight that state governments have over planning laws, public and social housing, and housing supply.

The parliamentary Inquiry into Homelessness in Victoria recommended that the right to housing be added to the Charter.⁷⁴ In response to the recommendation, the Victorian Government noted that it “is focused on improving the accessibility and enforceability of the Charter before considering the addition of further rights, such as the right to housing” and that “any future reform to rights in the Charter will require detailed and thorough consideration of the resourcing and economic impacts on Victorians”.⁷⁵

The Commission appreciates the government’s focus on improving the accessibility and enforceability of the Charter. This discussion paper provides tangible recommendations to achieve this aim.

69 Victorian Equal Opportunity and Human Rights Commission, *Putting principle into practice: submission to the four-year review of the Charter of Human Rights and Responsibilities Act 2006* (1 July 2011) 39.

70 *Universal Declaration of Human Rights*, GA Res. 217A (III), UN GAOR, UN Doc. A/810 (10 December 1948) art 25.

71 *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 11.

72 Australian Human Rights Commission, *Free & equal position paper: a human rights act for Australia* (2022) 18.

73 Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework, Final Report* (2024) at 375.

74 Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into homelessness in Victoria, Final Report* (2021) xxxvi.

75 Victorian Government, *Response to the Legal and Social Issues Committee Inquiry into Homelessness in Victoria* (2024) 29.

The Commission also considers that detailed analysis of the benefits of including a right to housing is readily available. This includes the recent report *The right to housing in Australia*, which highlights that “ensuring the right to housing may actually be cheaper than failing to do so”.⁷⁶ In 2025, the ACT paved the way for this reform by adding the right to housing in its Human Rights Act.⁷⁷

Studies from jurisdictions that have already introduced a right to housing have found that the cost of inadequate housing to health services, educational performance, the criminal justice system, frontline homelessness services and energy efficiency far outweigh the cost of ensuring housing adequacy.⁷⁸ Victoria faces the same pressures as elsewhere.⁷⁹

The right to housing would provide decision-makers with internationally agreed factors to consider when making housing-related decisions including legal security of tenure, availability of services and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.⁸⁰

The right to housing would not require the government to provide a house for every person or a right to home ownership or a right to invest in housing. Rather, introducing a right to housing in the Charter would require the executive to consider the impacts of new laws, regulations and policies on the right to housing, and public authorities to give proper consideration to this right in making decisions that affect housing for all people in Victoria.

Right to education

Everyone should have the right to a quality education to help them reach their full potential.

Incorporating the right to education in the Charter would recognise the right of each child in Victoria to have access to free public education appropriate to their needs on a non-discriminatory basis. This would include access to preschool, primary and secondary schooling, as well as tertiary education.

The right to education is set out in the ICESCR,⁸¹ the *Convention on the Rights of the Child*,⁸² the *International Covenant on the Elimination of All Forms of Racial Discrimination*⁸³ and the *Universal Declaration of Human Rights*.⁸⁴

The right to education is also recommended in the final report of the Yoorrook Justice Commission.⁸⁵

While Victoria’s current legal framework goes some way to ensuring a right to education, there are significant gaps.

The Charter currently protects the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.⁸⁶ However, while this has been used as a freedom to seek information, including accessing council buildings,⁸⁷ and the freedom to express an opinion through protest,⁸⁸ the right has not been interpreted as including a positive duty to provide education.

The Charter also provides a specific protection for public authorities to act in the best interests of a child, but this does not refer specifically to education and does not ensure access to a quality education.⁸⁹

The *Education and Training Reform Act 2006* (Vic) provides that students under the age of 20, “irrespective of the education and training institution they attend, where they live or their social and economic status, should have access to a high-quality education”.⁹⁰ However, this section is framed as a principle rather than a legally protected right and, as such, does not give rise to and cannot be taken into account in any civil cause of action.

76 Prof. Jessie Hohmann, *The right to housing in Australia* (University of Technology Sydney, 2025) 25.

77 *Human Rights (Housing) Amendment Act 2025* (ACT) s 4.

78 Alma Economics, *The right to adequate housing in Wales: the evidence base* (December 2021) <<https://sheltercymru.org.uk/wp-content/uploads/2026/03/Alma-Economics-Back-the-Bill-Phase-1-Full-Report.pdf.pagespeed.ce.OvKU6WRWDW.pdf>>.

79 David MacKenzie et al., *The cost of youth homelessness in Australia* (Australian Policy Online, 2016) 2.

80 Office of the United Nations High Commissioner for Human Rights, *The right to adequate housing*, Fact sheet No 21 (2014) <https://www.ohchr.org/sites/default/files/Documents/Publications/FS21_rev_1_Housing_en.pdf> 3.

81 *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 13.

82 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 28.

83 *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 1 (entered into force 4 January 1969) art 5(6)(v).

84 *Universal Declaration of Human Rights*, GA Res. 217A (III), UN GAOR, UN Doc. A/810 (10 December 1948) art 26.

85 Yoorrook Justice Commission, *Yoorrook for Justice*, Recommendation 7.

86 Charter s 15.

87 See *Slattery v Manningham City Council (Human Rights)* [2013] VCAT 1869.

88 See *Victoria Police v Anderson* [MCV] Unreported (23 July 2012) at 69.

89 Charter s 17(2).

90 *Education and Training Reform Act 2006* (Vic) s 1.2.1(b).

A right to education in the Charter would fill these gaps, ensuring that the right to education is clearly laid out in one place and accessible to everyone. If a person’s right to education was breached, they would have avenues to enforce their rights at a local level rather than the complicated process of complaint mechanisms under international law.

This right has already been incorporated into the human rights laws in Queensland⁹¹ and the ACT.⁹² Both jurisdictions provide children with the right to access an education appropriate to their needs and all people with access to further education and vocational training.

A right to education would require the Victorian executive and Parliament to consider the right when developing legislation and regulations. Public authorities would have to act compatibly with the right when making decisions and implementing laws, regulations and policies relating to education. This would be based on a framework of recognising the importance of education for human dignity, development and participation.

The right would also require that functioning educational institutions and programs are available in sufficient quantity and provide accessible and safe environments subject to reasonable and proportionate limitations.⁹³

A right to education would be an important step in maintaining Victoria’s status as “the education state”.

Right to a healthy environment

The protection of our environment, including healthy air, water and soil, is a crucial consideration in decision-making in modern-day Australia.

The human right to a healthy environment brings together the environmental dimensions of civil, cultural, economic, political and social rights, and protects the core elements of the natural environment that enable a life of dignity and justice. The right is particularly important for those who suffer most as a result of environmental harm including women, people with disabilities, people from lower socio-economic backgrounds, racial and ethnic minorities, and young people.

This is articulated broadly in international human rights law as the “right to a clean, healthy and sustainable environment”.⁹⁴ This was the framing of the right that was recognised by a resolution passed by the UN General Assembly, and supported by Australia, in 2022.⁹⁵

This definition has been refined for a uniquely Australian perspective. In May 2024, the federal Parliamentary Joint Committee on Human Rights supported the right to a healthy environment and recommended further consideration be given to the drafting of the right including consultation with Aboriginal and Torres Strait Islander Peoples.⁹⁶

In August 2024, the ACT Parliament passed the Human Rights (Healthy Environment) Amendment Bill 2023, becoming the first jurisdiction in Australia to introduce the right to a healthy environment.⁹⁷ In the explanatory statement, the ACT Government noted the benefits the right would have for:

- better health outcomes for Canberrans and ecosystems for both present and future generations
- encouragement of stronger environmental laws and governance
- improved access to justice for environmental harms in time; and
- reduction of environmental injustice, which is particularly important for Aboriginal and Torres Strait Islander Peoples and other vulnerable groups who are most at risk of environmental harm.⁹⁸

We have the opportunity to ensure that Victorians receive similar benefits from a healthy environment, now and into the future, by introducing this right to the Charter.

91 *Human Rights Act 2019* (Qld) s 36.

92 *Human Rights Act 2004* (ACT) s 27A.

93 Committee on Economic, Social and Cultural Rights, *General Comment No 13: The right to education* (art 13), UN ESCOR, 21st Session, Agenda Item 3, UN Doc E/C.12/1999/10 (8 December 1999).

94 United Nations Office of the High Commissioner for Human Rights, *What is the right to a healthy environment? Information note* (2022) <<https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>>.

95 *The human right to a clean, healthy and sustainable environment*, GA Res. 76/300, UN Doc. A/RES/76/300 (adopted 28 July 2022).

96 Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework, Final Report* (2024) xxii.

97 *Human Rights Act 2004* (ACT), s 27C was due to come into force on 28 February 2025 (see also ACT Government, *Right to healthy environment now enshrined in the ACT’s Human Rights Act* (28 August 2024) <https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/cheyne/2024/right-to-healthy-environment-now-enshrined-in-the-acts-human-rights-act>).

98 Explanatory statement, *Human Rights (Healthy Environment) Amendment Bill 2023* (ACT).

Right to self-determination

Self-determination is the fundamental principle that all people have the right to shape their own lives.

The principle that all people have the right to self-determination is contained in a number of international covenants. While a right to self-determination applies to all people, it is particularly important for First Peoples due to their experiences of dispossession and discrimination. For the purposes of Charter reform priorities, this discussion focuses specifically on the right to self-determination of First Peoples.

Under the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), self-determination ensures choice, participation and control.⁹⁹ It means that all peoples should have control over their own lives and future, and should be free to pursue their economic, social and cultural development.¹⁰⁰

The right to self-determination is a foundational right of international law, enshrined in the UN Charter, the ICCPR, the ICESCR and the UNDRIP. The UN Human Rights Committee described the right to self-determination as “the essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights”.¹⁰¹

The right to self-determination is one of the few rights from the ICCPR that is not provided for in the Charter.

The Yoorrook Justice Commission’s *report into Victoria’s child protection and criminal justice systems* notes that:

For Indigenous Peoples, the essence of the meaning of self-determination is the capacity to control their own destiny. The foundation for the assertion of self-determination for First Peoples is inextricably tied to their relationship to country, land and waters. It also requires ensuring all human and cultural rights of First Peoples.¹⁰²

The Yoorrook Justice Commission report also outlines that self-determination is of particular importance in the transformation of the child protection and criminal justice systems.¹⁰³

The Commission has previously recommended that a standalone right to self-determination be included in the Charter.¹⁰⁴ However, we have always advocated for the shape of this right to be determined by First Peoples themselves.

The question of the shape of the right to self-determination has to be revisited in light of the statewide Treaty signed between First Peoples and the state government.

The preamble to the *Statewide Treaty Act 2025* (Vic) “recognises and restores the inherent rights of First Peoples in Victoria, including the right to self-determination”.¹⁰⁵

Gellung Warl, the body established as the permanent representative and deliberative body for First Peoples in Victoria, “embodies and advances the right to self-determination of First Peoples to come together politically and make collective decisions”.¹⁰⁶

At the same time the First Peoples’ Assembly continues, with a stated function “to engage in activities relating to capacity building in First Peoples’ communities, including ... promoting the fundamental human rights of First Peoples, including the right to self-determination”.¹⁰⁷

The Commission is committed to supporting Treaty in line with these principles.

Whether self-determination is included as a standalone right in the Charter or in some other form should be a decision for First Peoples in Victoria.

99 Australian Human Rights Commission, *Self-determination and Indigenous peoples* (webpage, 3 December 2024) <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous>>.

100 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295, UN Doc. A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 3.

101 United Nations Human Rights Committee, *CCPR General Comment 12: the right to self-determination of Indigenous Peoples* (art 1), 21st Session, UN Doc. HRI/GEN/1/Rev.1 (13 March 1994) para 1.

102 Yoorrook Justice Commission, *Yoorrook for Justice*, 17.

103 Ibid.

104 See Victorian Equal Opportunity and Human Rights Commission, Submission to Parliamentary Joint Committee on Human Rights, *Submission for the Inquiry into Australia’s Human Rights Framework* (2023) <https://www.humanrights.vic.gov.au/static/5cb7adba3de1992a6db42c63241b9127/Submission-Inquiry_into_Australian_human_rights_act-July_2023.pdf> 12.

105 *Statewide Treaty Act 2025* (Vic), preamble.

106 Ibid.

107 Ibid s 18(k).

What are the options for a right to self-determination?

Ensuring an effective right to self-determination will result in better policy formulation, resource and economic management, health service delivery and culturally safe program design. The Victorian Government committed to the principles of Indigenous self-determination set out in the *Victorian Aboriginal Affairs Framework 2018–2023*.¹⁰⁸ This includes the guiding principle that “self-determination initiatives honour the norms set out in UNDRIP and Victoria’s *Charter of Human Rights and Responsibilities Act 2006*”.¹⁰⁹

There are differing perspectives on what this looks like in practice. It is vital that self-determination is shaped by the perspectives of First Peoples in Victoria. As the Victorian Aboriginal Affairs Framework notes, “inherent to self-determination is the right of Aboriginal Victorians to define for themselves what self-determination means”.¹¹⁰

The right to self-determination under international human rights law is framed as both an individual and a collective right. It provides that First Peoples have the right to “freely determine their political status and freely pursue their economic, social and cultural development”¹¹¹ and the right to “autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions”.¹¹²

In 2010, the Commission conducted extensive consultations with First Peoples in Victoria on this question of what a right to self-determination should look like.¹¹³ During the consultations, themes emerged that self-determination requires certain elements including non-discrimination, cultural integrity, economic development and expression of identity.¹¹⁴ Some of these elements are covered in the Charter through the right to equality and cultural rights.

The question of what self-determination looks like in Victoria was discussed by the Yoorrook Justice Commission¹¹⁵ and continued with the Treaty process.

Options for implementation include:

- addition of a standalone right to self-determination alongside other rights in the Charter
- addition of a right to self-determination that sits outside other rights and is not bound by the limitations clause of the Charter
- creation of a UNDRIP Act to implement the United Nations Declaration on the Rights of Indigenous Peoples
- embedding of self-determination in Treaty legislation
- updating of the Charter to include self-determination in the preamble, further rights to culture and a participation duty for First Peoples¹¹⁶
- other options based on the views of First Peoples in Victoria.

The right to self-determination will not succeed in Victoria if it is not shaped by First Peoples. Because of this, the Commission encourages investment in further comprehensive collaboration and co-design with First Peoples to shape the right to self-determination for the Victorian context.

¹⁰⁸ Victorian Government, *Victorian Aboriginal Affairs Framework 2018–2023* (2018) 24.

¹⁰⁹ Ibid.

¹¹⁰ Ibid 22.

¹¹¹ *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 1.

¹¹² *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295, UN Doc. A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 4.

¹¹³ Victorian Equal Opportunity and Human Rights Commission, *Indigenous self-determination and the Charter of Human Rights and Responsibilities – A framework for discussion* (2010).

¹¹⁴ Ibid 21.

¹¹⁵ Yoorrook Justice Commission, *Yoorrook for Justice*, 74.

¹¹⁶ This was the preferred approach in Australian Human Rights Commission, *Free & equal: revitalising Australia’s commitment to human rights* (2023) <https://humanrights.gov.au/sites/default/files/2311_freeequal_finalreport_1_1.pdf> 186.

Participation duties

While the existing rights in the Charter have come some way in protecting the rights of people in Victoria, some are still not fulfilling the founding purposes of the Charter.¹¹⁷

Rights of the child

While the Charter currently guarantees children with such protection as is in their best interests and is needed by reason of being a child,¹¹⁸ the Commission supports broadening the protection of children’s rights to include the right to participation in decisions impacting them commensurate with their age and maturity.

This participation duty would bring Victoria in line with the *Convention on the Rights of the Child*¹¹⁹ and is supported in the Australian Human Rights Commission’s *Free & Equal* report.¹²⁰ This would provide children and young people with more agency in government decisions that significantly affect their lives.



¹¹⁷ Charter s 1(2).

¹¹⁸ Ibid s 17.

¹¹⁹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12.

¹²⁰ Australian Human Rights Commission, *Free & equal: revitalising Australia’s commitment to human rights* (2023) <https://humanrights.gov.au/sites/default/files/2311_freeequal_finalreport_1_1.pdf> 59.

Rights of people with disabilities

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability investigated how to promote a more inclusive society that supports people with disabilities.¹²¹

The final report included recommendations for the introduction of a federal disability rights Act,¹²² noting that a human rights Act was outside the Royal Commission's terms of reference.¹²³ The Royal Commission also recommended that states should enact legislation complementary or equivalent to the Australian disability rights Act, taking into account their own legal frameworks.¹²⁴ The Victorian Government committed to considering this recommendation further, noting some existing overlap with the Charter and the Equal Opportunity Act.¹²⁵

Some features of the proposed disability rights Act may already be covered by the Charter such as the right to non-discrimination and equality, the right to liberty and security of person, and the right to take part in public life.¹²⁶

One recommendation not already covered by the Charter is that the executive should consult on development of laws and public authorities should consult with people with disabilities, as well as families, carers and supporters, in developing and evaluating policies, laws and programs, and in planning new initiatives or making major changes to services that are provided to people with disabilities or have a direct and significant impact on people with disabilities.¹²⁷

The Commission considers that this could be incorporated into the Charter by including an obligation on public authorities to consult with people with disabilities on decisions that significantly impact on their lives. Such a duty to consult with people with disabilities, as well as with children and young people¹²⁸ and First Peoples,¹²⁹ would bring Victoria in line with our international legal obligations,¹³⁰ align with the Australian Human Rights Commission's recommendations¹³¹ and make for fairer and more effective decision-making.

121 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023).

122 *Ibid* vol 4, 17.

123 *Ibid* 166.

124 *Ibid* 28.

125 Victorian Government, *Response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (July 2024) 32.

126 This includes a positive duty for public authorities to have due regard to the need for necessary and proportionate actions to advance the policy objectives of equality, inclusion and respect for the dignity of people with disabilities, a duty for public authorities to provide appropriately trained and credentialled interpreters, and a duty for public authorities to ensure that their communications are provided in at least two formats accessible to people with disabilities.

127 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 194.

128 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12.

129 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295, UN Doc. A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 19.

130 *Convention of the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) art 3.

131 Australian Human Rights Commission, *Free & equal: revitalising Australia's commitment to human rights* (2023) <https://humanrights.gov.au/sites/default/files/2311_freeequal_finalreport_1_1.pdf> 186.

Improving the effectiveness of the Charter

Since its commencement, the Charter has helped ensure that decisions by government and public authorities are more robust. Along the way, we have learned much about how the Charter's operation can be improved so that everybody is treated fairly, no matter who they are or where they live.

Standalone cause of action and judicial review

A person whose Charter rights have been breached must have simple and effective avenues of redress.

Currently, the Charter does not allow a person to bring an independent action against a public authority for a breach of the Charter. A person can only raise the Charter in a legal case if they have standing to bring a separate legal claim against the public authority. This significantly increases the complexity of bringing a claim under the Charter, reduces the ability for individuals to obtain effective relief and leads to human rights breaches going unchallenged. As Michael Brett Young noted in the eight-year review of the Charter, "providing for human rights without corresponding remedies sends mixed messages to the public sector and to the community about the importance of those rights".¹³²

By contrast, human rights legislation in the ACT allows for a person to take a claim for a breach of a human right to court without any need to attach it to another claim.¹³³ Under this model, a person whose human rights have been breached can either bring a proceeding using the direct cause of action or rely on their rights in other legal proceedings. When the change was made in 2009, there was some concern that it would result in an unsustainable number of legal cases. While there was an initial rise in legal cases mentioning the Human Rights Act, the number of human rights cases quickly returned to just above pre-2009 levels.¹³⁴

A fair, just and accountable human rights system should allow a person whose rights have been violated to have their matter determined by an appropriate independent body.¹³⁵ VCAT already has jurisdiction over human rights matters covered under other Victorian laws including freedom of information, privacy, tenancy and equal opportunity involving government. The Commission recommends adopting the ACT model, with VCAT being the appropriate forum for people alleging a breach of their human rights to lodge an application, as recommended by Michael Brett Young's review.¹³⁶

132 Michael Brett Young, *From commitment to culture* 127.

133 *Human Rights Act 2004 (ACT)* s 40C.

134 ACT Human Rights Commission, *Look who's talking: a snapshot of ten years of dialogue under the Human Rights Act 2004* (2014) 8.

135 *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 2.

136 Michael Brett Young, *From commitment to culture* viii.

Remedies

Effective remedies, including financial compensation, are vital for just outcomes when people’s rights are breached.

While complementary laws such as the Equal Opportunity Act include the availability of financial compensation as a remedy, the Charter currently does not include entitlement to an award of damages as compensation for rights breaches. The original intent of this provision was to focus remedies on “practical outcomes rather than monetary compensation”.¹³⁷ However, it has taken away from the reality that breaches of human rights can have impacts that can only be remedied financially. This is out of step with remedies for unlawful actions of public authorities available for other administrative decisions. In many cases, financial compensation may be the only effective remedy.

In addition, not having clear, accessible and enforceable remedies under the Charter creates a disincentive for compliance, as there are no obvious consequences for a breach.

Although an award of damages does not mean that rights that have been violated are restored or harms fully redressed, financial compensation can provide a form of restitution, recognise injustice, aid in recovery and act as a deterrent from further human rights violations.¹³⁸

The Commission supports amendments to the Charter to allow for the award of damages for a breach of human rights when a court or tribunal determines that administrative action does not adequately address the harm the person has experienced. We consider that this reform would bring the Charter more in line with comparable jurisdictions including the United Kingdom,¹³⁹ New Zealand¹⁴⁰ and the European Union,¹⁴¹ as well as the ICCPR.¹⁴²

Enabling a standalone cause of action with just and appropriate remedies, including damages, as part of a disability rights Act was a key recommendation of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.¹⁴³ While the Victorian Government has “noted” this recommendation,¹⁴⁴ incorporating it into the Charter would fulfill the Royal Commission’s recommendation that states should enact legislation complementary or equivalent to a federal Disability Rights Act,¹⁴⁵ while also improving the lives of people with disabilities.

The Commission also supports the related recommendation of the 2011 Charter review that Charter breaches should influence the calculation of damages where that remedy has been sought in relation to a non-Charter cause of action.¹⁴⁶



137 Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2006, 1295 (Rob Hulls, Attorney-General).

138 *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Res. 60/147, UN Doc. A/Res/60/147 (15 December 2005) IX.

139 *Human Rights Act 1998* (UK) s 8(1).

140 *Simpson v Attorney General [Baigent’s case]* [1994] 3 NZLR 667.

141 *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 23 UNTS 221, art 13.

142 *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 2.

143 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 245.

144 Victorian Government, *Response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (2024) 31.

145 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 17.

146 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Review of the Charter of Human Rights and Responsibilities Act 2006* (2011).

Alternative dispute resolution

Alternative dispute resolution (ADR) is a crucial alternative to going to court for complainants. It is a quick, cheap, informal and easy-to-navigate method of redress outside the court system. Parties can resolve complaints without the need for lawyers and with outcomes that suit both parties. Through a dispute-resolution framework, such outcomes can be both individual and systemic.¹⁴⁷

Currently, there is no single body that can receive complaints about allegations of a human rights breach against “public authorities” as defined in the Charter. Instead, there is a patchwork of options for dealing with alleged human rights breaches.

While the Victorian Ombudsman can undertake ADR in relation to many complaints, including human rights complaints,¹⁴⁸ the inability of the Commission to accept human rights complaints despite our responsibilities and functions under the Charter creates confusion. As Victoria’s independent statutory human rights authority, the Commission has the expertise in human rights to provide a high-quality ADR service that complements its other statutory functions under the Charter and the Equal Opportunity Act.

There are already models in Australian jurisdictions that Victoria could replicate. Queensland’s Human Rights Act provides the Queensland Human Rights Commission with the power to manage human rights complaints.¹⁴⁹ This includes the ability to conduct conciliation “to promote the resolution of the complaint in a way that is informal, quick and efficient”.¹⁵⁰ Similarly, the ACT Human Rights Act allows complaints about breaches to be made to the ACT Human Rights Commission for confidential conciliation.¹⁵¹ In recommending a national human rights Act, the Parliamentary Joint Committee on Human Rights noted that the Australian Human Rights Commission should be “effectively and sustainably funded” to conciliate human rights complaints.¹⁵²

A Commission function to offer dispute-resolution services in relation to human rights complaints would complement available avenues of complaint in Victoria. ADR would be the first level of redress in any remedies provision and fill a gap to ensure fairer, faster, cost-effective outcomes for everyone involved.

Representative complaints

The Charter does not provide for individuals who have experienced a breach of their human rights to join a group of similarly impacted people to bring a representative complaint. This may have a particular impact on people who do not have the means to bring a complaint themselves.

By contrast, the Equal Opportunity Act allows representative bodies to apply to the Commission for dispute resolution if the body has sufficient interest in the dispute.¹⁵³

The Commission recommends that parties have the option not to be named in a complaint, to increase access to justice. Further, representative complaints, particularly without a requirement to have named individuals will remove barriers to the use of the Charter by:

- **reducing costs** – the overall costs of bringing a complaint are likely to be borne by the representative organisation, which would be a significant benefit for individuals involved in the claim.
- **reducing individual burden** – going through the complaint process alongside other individuals could reduce the trauma associated with bringing a legal action for individual complainants.
- **broadening the impact** – the ability to bring representative complaints may result in more effective systemic change. While individual complaints can and have had the ability to make significant change (for example, *DPP v SE*¹⁵⁴), allowing complaints from a group or class of people would require deeper consideration of how systems and processes may be having broader impacts on human rights.

147 Victorian Equal Opportunity and Human Rights Commission, Submission to Parliamentary Joint Committee on Human Rights, *Submission for the Inquiry into Australia’s Human Rights Framework* (July 2023) 17.

148 *Ombudsman Act 1973* (Vic) s 13(2).

149 *Human Rights Act 2019* (Qld) s 77.

150 *Ibid* s 80.

151 *Human Rights Commission Act 2005* (ACT) ss 14(1)(a) and 51.

152 Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework, Final Report* (2024) xxiii.

153 *Equal Opportunity Act 2010* (Vic) s 114.

154 *DPP v SE* [2017] VSC 13, in which it was found that Charter rights are applicable and relevant in determining a bail application for a child in detention.

Costs orders

The possibility of an adverse costs order – where a claimant is ordered to pay the other party’s legal costs if the claimant’s litigation is unsuccessful – is a significant barrier to pursuing legal action in cases of unlawful conduct under human rights laws.

Claimants often face a high risk of losing their human rights cases because these claims are often hard to prove. Respondents may have disproportionate access to relevant information and control of key witnesses.¹⁵⁵ Further, significant power imbalances can deter people from making claims against well-resourced organisations.¹⁵⁶

Under discrimination laws, where financial compensation is an available remedy claimants without access to free legal services who succeed in litigation can still end up incurring as much or more in legal fees as they receive in compensation.¹⁵⁷

The Commission proposes an equal access model to assist in levelling the playing field. This was the model put forward by the federal Parliamentary Joint Committee on Human Rights’ draft human rights Bill.¹⁵⁸

Equal access to costs would allow people who have experienced a breach of their human rights to recover their legal costs if successful. If unsuccessful, claimants would not be required to pay the other parties’ costs. Limited exceptions to the model would apply, including vexatious litigation.¹⁵⁹ This model would allow more claims to be heard, help complainants obtain fair redress and educate public authorities and the public that a breach of human rights law has consequences.¹⁶⁰

155 Letter from National Legal Aid Secretariat to Attorney-General’s Department review into an appropriate cost model for Commonwealth anti-discrimination laws (14 April 2023) 4.

156 Australian Government, Attorney-General’s Department review into an appropriate cost model for Commonwealth anti-discrimination laws (February 2023) 11.

157 Ibid.

158 Parliamentary Joint Committee on Human Rights, Inquiry into Australia’s Human Rights Framework, Final Report (2024) App 5 s 49.

159 Power to Prevent Coalition, *Time for equal access in discrimination claims* (Joint statement, 14 April 2023) 1.

160 Letter from National Legal Aid Secretariat to Attorney-General’s Department review into an appropriate cost model for Commonwealth anti-discrimination laws (14 April 2023) 5–7.

Override declarations

The Charter currently permits Parliament to declare that a law or part of a law has effect despite being incompatible with human rights.¹⁶¹ This is known as an override declaration.

The intention was that an override declaration is only made in exceptional circumstances¹⁶² where it will serve the public’s best interests.¹⁶³ The override declaration signals to the executive, courts, public authorities and the community that the legislation does not have to be interpreted in accordance with the Charter.¹⁶⁴

However, this power has rarely been used in Victoria, with only four override declarations under section 31 in the almost two decades since the Charter’s commencement.¹⁶⁵ In comparison, the New Zealand Parliament made four reports of Bills appearing to be inconsistent with human rights in 2024.¹⁶⁶

Furthermore, the use of this power is inconsistent and does not always have proper regard to the required exceptional circumstances.¹⁶⁷ The overrides in Victoria to date have not involved serious threats to national security or a state of emergency, and parliamentary debates regarding overrides have not always scrutinised whether the overrides meet the exceptional circumstances required by the Charter.¹⁶⁸

The repeal of the power of Parliament to override the Charter was recommended by the eight-year review of the Charter,¹⁶⁹ a position the Commission has consistently supported.¹⁷⁰ Removing override declarations from the Charter would increase transparency, scrutiny and accountability of law-making in Victoria.

161 Charter s 31(1).

162 Ibid s 31(4).

163 Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2006, 1293 (Rob Hulls, Attorney-eneral).

164 Charter s 31(6).

165 Victorian Equal Opportunity and Human Rights Commission, *2023 Charter report on the operation of the Charter of Human Rights and Responsibilities* (August 2024) 27.

166 New Zealand Ministry of Justice, ‘Section 7 reports’, *Constitutional issues & human rights* (webpage, 18 November 2025 < <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/section-7-reports> / <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/section-7-reports/> >).

167 Julie Debeljak, ‘Of parole and public emergencies: why the Victorian Charter override provision should be repealed’ (2022) 45(2) *UNSW Law Journal* 570, 572.

168 Ibid 592.

169 Michael Brett Young, *From commitment to culture* 198.

170 Most recently in Victorian Equal Opportunity and Human Rights Commission, Submission to Parliamentary Joint Committee on Human Rights, *Submission for the Inquiry into Australia’s Human Rights Framework* (July 2023) 31.

Intervention function

The Commission and the Victorian Attorney-General both have the power to intervene in a legal case to assist “any court or tribunal” in the application of the Charter.¹⁷¹

However, it is currently unclear that these intervention powers would extend past Victorian courts. This is because “court” is defined exclusively as the Supreme Court, the County Court, the Magistrates’ Court, the Children’s Court or the Coroners Court.¹⁷²

The intention of this exclusive list makes sense in limiting the scope of courts in determining what is a public authority under section 4 of the Charter. However, this exclusive list may lead to absurd consequences if the Commission and the Attorney-General are potentially unable to intervene and provide valuable expertise on the Charter in the Federal Courts and the High Court of Australia.

For clarity, sections 34 and 40 should be amended to make it clear the intervention functions apply to any court or tribunal in Australia.



171 Charter ss 34(1) and 40(1).

172 Ibid s 3.

Interpretation of rights

The Charter’s primary purpose is to protect and promote the rights of all people in Victoria.¹⁷³

One of the ways it achieves this is through section 32(1), which outlines that “so far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights”¹⁷⁴ – the interpretive clause.

Unlike the Queensland Human Rights Act, the Charter does not explicitly define what it means for a statutory provision to be “compatible with human rights”. This has resulted in significant uncertainty about the interaction between the interpretive clause and the limitations clause in section 7(2).

Section 7(2) states that rights may be subject to “such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors”.¹⁷⁵ The Charter’s explanatory memorandum outlines that section 7(2) is aimed to “assist courts and government in deciding when a limitation arising under the law is reasonable and demonstrably justified”.¹⁷⁶

This uncertainty has limited the extent to which courts are willing to interpret statutory provisions in line with human rights, notably since the High Court’s decision in *Momcilovic*.¹⁷⁷ In that case, the High Court was divided on whether the limitations clause informs the interpretive process under section 32,¹⁷⁸ whether it does not¹⁷⁹ or whether both these sections are valid at all.¹⁸⁰ The requirement in section 32 that statutory provisions be interpreted “consistently with their purpose” has also given rise to confusion.

In *Momcilovic*, some judges argued that the interpretative clause was intended to bring the Charter in line with the United Kingdom’s Human Rights Act, which requires laws to “be read and given effect in a way which is compatible with the Convention rights”.¹⁸¹ However, other judges interpreted “consistently with their purpose” as “words of limitation”.¹⁸²

This uncertainty risks impacting the fundamental rights of everyday Victorians, as the operation of section 32(1) is unclear. It has also caused frustration and uncertainty within the legal community, with some practitioners being reluctant to raise section 32(1) in legal claims due to its uncertain application.

173 Charter s 1(1).

174 Ibid s 32(1).

175 Ibid s 7(2).

176 Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2006, 1291 (Rob Hulls, Attorney-General).

177 *Momcilovic v The Queen* (2011) 245 CLR 1.

178 Ibid 168.

179 Ibid 35 and 574–575.

180 Ibid 439.

181 *Human Rights Act 1998* (UK) s 3(1). Note that “Convention rights” is a reference to the European Convention on Human Rights.

182 *R v Momcilovic* [2010] VSCA 50 [74].

The Charter needs clarification to renew confidence in its application.

To clear up this issue, the Commission considers there need to be simultaneous changes to the limitation and interpretative clauses.

Firstly, a definition of “compatible with human rights” needs to be inserted into the Charter.

For instance, the Queensland Human Rights Act explicitly links the limitations clause with the interpretative clause to make it clear that they are part of the same process of determining compatibility. It does so by defining compatibility as including consideration of justifications for limiting rights.¹⁸³ Taking this step would bring Victoria in line with the ACT position¹⁸⁴ as well as the draft human rights Bill proposed by the federal Parliamentary Joint Committee on Human Rights.¹⁸⁵

Secondly, the words “consistently with their purpose” should be removed from section 32(1). Aside from causing confusion, these words are unnecessary – courts and tribunals would in any event have regard to the text, context and purpose of any statutory provision being interpreted.¹⁸⁶

Courts are also starting to show increased willingness to use section 32 to adopt a more rights-compatible meaning of a provision where the “full and strict application” of a provision would seriously interfere with a Charter right.¹⁸⁷ This was seen in the recent High Court case of *DPP v Smith*, where Justice Edelman’s dissenting judgment argued that a direction under the Criminal Procedure Act “had the potential to undermine the fairness ideals of the system of criminal justice”, a conclusion that was “powerfully reinforced by the *Charter*”.¹⁸⁸ Justice Edelman noted that applying a rights-compatible meaning of a provision is not “disobedient to the intention of Parliament” but is, rather, “making a necessary choice, according to the terms required by Parliament itself, between the conflicting requirement of a general enactment (s 32) and the application of a particular enactment of the Parliament”.¹⁸⁹ This dissenting judgment is a sign that courts could start moving away from the position taken in *Momcilovic*.

With these developments in courts and other jurisdictions, the Victorian Parliament can help clarify any confusion with reform to these two components of section 32. Parliament still maintains parliamentary sovereignty and can amend the law to clarify the meaning of a provision. If Parliament’s intention is to bypass human rights considerations, it can make this unambiguously clear in the drafting of incompatible statutory provisions.

Ultimately, these changes of the limitation and interpretive clauses will result in more rights-respecting laws for the benefit of all people in Victoria.

183 *Human Rights Act 2019* (Qld) s 8.

184 *Human Rights Act 2004* (ACT) s 30.

185 Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework*, Final Report (2024) App 5 at 9.

186 Bruce Chen, ‘If at first you don’t succeed... a critique of the Australian human rights Act proposal and the Inquiry into Australia’s Human Rights Framework’ (2024) 47(2) *UNSW Law Journal* 355, 373.

187 *DPP v Smith* [2024] HCA 32, 138.

188 *Ibid* 104.

189 *Ibid* 138.

Police actions

The Charter helps ensure public authorities act in a way that is compatible with human rights.¹⁹⁰

If a person seeks a remedy in relation to an act or a decision of a public authority because that act or decision was unlawful, the Charter allows them to seek that relief or remedy on the grounds that the act or decision was unlawful under the Charter as well.¹⁹¹

However, the Charter does not currently provide equal consequences for the unlawful use of police powers. Police tort claims about the actions of individual police officers can only be brought against the State of Victoria – not the individual officers – except in limited circumstances. So when a police tort claim is brought against the State of Victoria because of a breach of human rights, the person bringing the claim cannot seek relief under the Charter. This is because the only remedy available for the person to seek under the Charter would be a declaration against the State of Victoria, rather than against the individual police officer, and it is not possible to make a declaration against the State in relation to a police officer’s actions. This means a person is not able seek relief for a Charter breach due to actions of individual police officers.¹⁹²

This issue would be resolved if section 39 of the Charter was amended to allow for police tort claims or if a standalone cause of action for Charter claims was established for breaches of the Charter.

190 Charter s 38(1).

191 Charter s 39(1).

192 *Brown v State of Victoria (No 3)* [2025] VSC 765 (12 December 2025) 469.

Conclusion: A Charter fit for modern Victoria

Over its two decades in operation, the Charter has benefited all Victorians.

It has made for fairer laws, more effective decision-making and more balanced decisions by courts and tribunals.

Put simply, the Charter has made a genuine difference to people's lives.

During this time, Victoria has changed and grown as a society. Despite clear evidence of the need for reform and other jurisdictions moving ahead, the Charter has remained largely unchanged. It is at risk of being left behind, to the detriment of all people in Victoria.

It is time for the Charter to evolve in order to remain relevant, effective and responsive.

The reforms outlined in this paper will better protect the rights of all people in Victoria, promote better understanding of those rights and empower people to seek justice if their rights are violated.



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