

## Fact Sheet: Community organisations and the Charter of Human Rights and Responsibilities Act 2006 (Vic)

### Overview

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This fact sheet will assist community organisations operating in Victoria to understand how the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (the Charter) affects them.

The Charter imposes legal obligations on 'public authorities' to respect, protect and promote human rights. These obligations may apply to the actions or decisions of community organisations, if they meet the definition of a 'public authority'. Even if your community organisation is not a public authority, it would be best practice to follow the Charter recommendations.

**Note:** The information contained in this fact sheet is intended as a guide only, and is not legal advice. If you or your organisation has a legal problem you should talk to a lawyer before making a decision about what to do. The information in this fact sheet is written for people resident in, or affected by, the laws that apply in Victoria, Australia and is current at 1 November 2010.

### What kind of human rights does the Charter protect?

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The Charter protects a range of civil and political human rights such as freedom from discrimination, freedom of expression (including thought, religion, culture and language) and the right to freedom of association.

Also protected are the right to privacy and the right to protection from damage to a person's reputation. Another group of rights include those relating to the procedures of the legal system, such as the right to a fair hearing and to legal representation.

Other rights focus on families and children, who are considered a particularly important and vulnerable part of the community and fundamentally deserving of protection.

For a full list of the rights under the Charter, see the link to the Human Rights Commission website in Related Resources at the end of this document.

### Does the charter apply to your organisation?

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In many cases, community organisations will be defined as public authorities and must comply with the Charter if they are undertaking functions of a public nature.

In other words, if community organisations are providing services on behalf of government, it is likely that they may be considered to be a public authority.

Your community organisation may be a public authority if:

1. it is established by legislation and has functions of a public nature (see below for a definition); or
2. its activities include functions of a public nature (see below for a definition) and it is undertaking those functions on behalf another public authority or the State, whether under a contract or otherwise (eg. this may occur when your community organisation is delivering services for a Victorian Government department under an outsourcing or tendering arrangement); or
3. regulations made under the Charter say it is one.

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

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

- ▶ is carrying out activities that are typically considered to be government functions (eg. providing services for the homeless, seniors, youth or people suffering illness or disability); and
- ▶ receives government funding to carry out the function.

Note that just because your organisation receives public funding to perform a function does not necessarily mean the organisation is acting on behalf of the State or a public authority. The Charter provides the example of a non-government school: while the school is undertaking functions of a public nature, it is not acting on behalf of the government, and is therefore not a public authority for the purposes of the Charter.

Whether your community organisation will be considered a 'public authority' conducting 'functions of a public nature' is a difficult question that will depend on individual circumstances. Cases suggest the definition of public authority will be interpreted widely and generously in order to protect human rights. For example, a recent Victorian Civil and Administrative Tribunal (VCAT) decision held that a not-for-profit housing agency was a 'public authority' because they undertook functions of a public nature on behalf of the State.

**Tip:** Regardless of whether the Charter applies to your organisation, the best practice approach is for community organisations to abide by the Charter's principles when making decisions or delivering services.

## What can your organisation do to comply with the obligations in the Charter?

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The Charter aims to protect the dignity and respect of individuals through promoting conduct which would be in their best interests and complies with human rights standards.

The Charter states that it is **unlawful** for a public authority to act in a way that is incompatible with a human right, or to make a decision without giving proper consideration to a relevant human right unless, by statute or law, there was no other reasonable conduct or decision that could have been made.

If your community organisation is required or mandated to follow legal rules which clearly contradict the human rights protected in the Charter, then the Charter will take second place to those rules. However, where there is room to interpret the legal rules consistently with the human rights contained in the Charter, you should apply the rules in a way that is compatible with those human rights.

There are ways that your community organisation can show its support and commitment to complying with the Charter, whether or not your organisation is legally required to do so. These include:

- ▶ Adding the human rights contained in the Charter to your constitution or creating a statement of objectives that align with the Charter's aims. This will indicate to anyone dealing with or forming part of your organisation that you are keeping the Charter rights in mind while conducting your organisation's affairs or providing services;
- ▶ Outlining the human rights you are committing to when engaging with clients or entering any contracts, such as employee agreements;
- ▶ Requiring other service providers with whom you may contract to comply with human rights standards and principles;
- ▶ Educating employees and volunteers within your organisation about the Charter and the human rights protected by it.

## What happens if your organisation breaches the Charter?

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Some common areas where human rights may be breached are racial discrimination, sexual harassment or discrimination, and religious vilification. When deciding whether a community organisation has breached its obligations under the Charter while acting in the capacity of a public authority, each situation will be considered by looking at the particular facts and circumstances.

The aim of the Charter is to protect and promote human rights through prevention, rather than litigation. Therefore individuals cannot sue for acts or decisions that breach the Charter alone.

However, a human rights issue may be raised in conjunction with a complaint under a separate cause of action. This means that if an individual can go to court to obtain a remedy against the public authority via *another legal avenue* (e.g. through existing anti-discrimination, equal opportunity laws or where there has been a breach of a duty of care) then they may also bring an action under the Charter.

So although a breach of the Charter does not of itself entitle a person to claim damages or compensation, the Charter does provide for a number of potential remedies.

Further, all Victorian legislation must be interpreted and applied compatibly with the Charter. The Courts have the power to review whether a community organisation (whether a public authority or not) has applied Victorian laws in a manner that is compatible with the Charter. Accordingly, if your organisation is established by, or operates under, Victorian legislation, then there is a high likelihood that the Charter will be relevant to the work of your organisation.

An individual may submit an application to a tribunal such as VCAT or the court to assess whether there has been a breach of a human right. The process may also involve the Victorian Equal Opportunity and Human Rights Commission. The result will be a recommendation on whether or not there has been a breach. There may also be an inquiry or investigation by the Ombudsman.

## Related resources

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### Related PilchConnect fact sheets

[Fact sheet: What does 'not-for-profit' mean?](#)

[Fact sheet: Duties of Committee of Management members in Victorian incorporated associations](#)

[Fact sheet: Duties of directors of a company limited by guarantee](#)

### Related legislation

Charter of Human Rights and Responsibilities Act 2006 (Vic)

Corporations Act 2001 (Cth)

### Related links

Victorian Equal Opportunity and Human Rights Commission (VEOHRC) see [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)

The Victorian Department of Justice see [www.justice.vic.gov.au/humanrights](http://www.justice.vic.gov.au/humanrights)

The Australian Human Rights Commission see [www.humanrights.gov.au](http://www.humanrights.gov.au)

Human Rights Law Resource Centre (HRLRC) see [www.hrlrc.org.au](http://www.hrlrc.org.au)

Victorian Department of Human Resources, Service Agreement Information Kit for funded organisations see [www.dhs.vic.gov.au/facs/bdb/fmu/service-agreement/5.departmental-policies-and-procedures/5.9-victorian-charter-of-human-rights-and-responsibilities](http://www.dhs.vic.gov.au/facs/bdb/fmu/service-agreement/5.departmental-policies-and-procedures/5.9-victorian-charter-of-human-rights-and-responsibilities).