
An Overview of the Victorian *Charter of Human Rights and Responsibilities Act 2006*

Ben Schokman
Lawyer
Human Rights Law Resource Centre Ltd
humanrights@vicbar.com.au
www.hrlrc.org.au
(03) 9225 6653



How does the *Charter* work?



- 'Dialogue model'
 - Establishes a number of mechanisms:
 - Parliament
 - Executive
 - Courts
 - Ombudsman
 - Enshrines 20 civil and political human rights
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Human Rights in the *Charter*



- Derived from the *International Covenant on Civil and Political Rights (ICCPR)*

F reedom: movement, assembly and association, expression, religion and belief, liberty, fair hearing

R espect: life, protection of families, cultural rights

E quality: non-discrimination, equal recognition

D ignity: torture and cruel treatment, privacy and reputation, humane treatment in detention

A utonomy: taking part in public life

Interpreting Rights in the *Charter*



- Must be interpreted and applied so as to make them ‘real and effective’, not ‘theoretical and illusory’
 - eg. right to fair hearing subsumes right of access to courts
 - May impose both positive and negative obligations
 - eg. right to life may require steps to protect life
 - ‘Living tree’ – evolving standards and values
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Limitations on Human Rights



- Rights may be subject to limitations that are:
 - Reasonable
 - Demonstrably justified
 - Consistent with a free and democratic society
 - Take into account all relevant factors
 - Nature of right
 - Purpose of limitation (**legitimate aim**)
 - Nature and extent of limitation (**proportionality**)
 - Relationship between limitation and purpose
 - Any less restrictive means (**minimal impairment**): s 7(2)
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The *Charter* and Parliament



- Statements of Compatibility (s 28)
 - Whether and how legislation is compatible
 - Scrutiny of Acts and Regulations Committee (s 30)
 - Must consider any Bill and report as to compatibility
 - Override declarations (s 31)
 - *Charter* does not apply
 - Only in 'exceptional circumstances' and for 5 years
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The *Charter* and the Executive



- What is a ‘public authority’? (s 4)
 - Core public authorities
 - ‘Functional’ public authorities (ie, entities discharging ‘functions of a public nature’)
 - Must give ‘proper consideration’ to human rights in decision-making processes (s 38(1))
 - Real, genuine and proportionate consideration
 - Must act compatibly with human rights (s 38(1))
 - Act includes failure to act
 - May impose positive obligations
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The *Charter* and the Courts



- All Victorian legislation, so far as it is possible to do so consistently with statutory purpose, must be interpreted compatibly with human rights (s 32(1))
 - New, overarching principle of statutory interpretation
 - Ordinary meaning of words may be displaced and words may be 'read in' or 'read down'
 - International and comparative human rights law may be relevant to interpretation of Victorian law (s 32(2))
 - UN Human Rights Committee, European Court of Human Rights, domestic courts of UK, NZ, Canada, South Africa
 - Declarations of Inconsistent Interpretation (s 36)
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- Legal proceedings (s 39(1))
 - No independent cause of action
 - Judicial review, injunctive and declaratory relief (s 39(2))
 - Damages (s 39(3))
 - No damages available for breach of *Charter* in and of itself but entitlement to damages for other causes of action unaffected
 - Ombudsman
 - May enquire into or investigate whether any administrative action is incompatible with human rights
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Reflections from the UK: Impact on Policy and Service Delivery



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- Human rights are common sense and can improve lives
 - Improved legislative and executive transparency and accountability
 - Improved framework for design and delivery of public services
 - Awareness-raising, education and capacity building around human rights can empower people and result in:
 - Better public service outcomes
 - Improved levels of consumer satisfaction
 - More flexible, individualised and responsive policies and practices
 - Core principles of FREDA can trigger new thinking and help decision-makers 'see seemingly intractable problems in a new light'
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Reflections from the UK: Impact on Litigation

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- No significant increase in litigation
 - Considered in 1/3 of all House of Lords cases and 'substantially affected result' in 1/10
 - Reference to HRA by practitioners and judges often cursory and unsophisticated, reflecting need for more extensive and effective legal professional and judicial education
 - Enhanced dialogue between UK and other human rights courts
 - Human rights organisations can and should play important role in empowering people with knowledge about human rights and acting with and for them to promote and protect human rights
 - Language and ideas of rights can be used to secure positive changes not only to individual circumstances, but also to policies and procedures
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Further Information



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