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# CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES

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PROTECTION OF FREEDOMS AND RIGHTS FOR  
EVERYONE IN VICTORIA

## **A message from the Attorney-General**

The Charter of Human Rights and Responsibilities, one simple but historic document that articulates our freedoms, rights and responsibilities, is now enshrined in Victorian law.

Freedom of speech, freedom of association, protection from cruel and degrading treatment – these and other basic human rights are almost universally recognised, yet not always practised.

At the heart of Victoria's Charter of Human Rights and Responsibilities is respect: the belief that everyone is entitled, as we say, to 'a fair go'. It's part of our national character. It's behind our willingness to help in times of disaster or distress. Yet the notion of 'a fair go' can be ignored, eroded, or corrupted and rights we take for granted diminished or removed.

Contrary to what many of us may assume, the Australian Constitution actually offers little protection for human rights. Other rights and responsibilities are haphazardly scattered across the Victorian statute books and common law while some have been entirely unprotected. This Charter collates and expresses our rights in a clear and commonsense way that can be understood by all.

The Charter is the result of consultation with a wide range of individuals and groups by an independent panel. The panel travelled the state over seven months in 2005 to hear the views of the Victorian community. The consultation resulted in an unprecedented 2500 responses from people and organisations, of which more than 90 percent supported the passage of new human rights legislation.

The Bracks Government places the highest value on protecting and promoting basic human rights for every Victorian. This landmark legislation ensures that future governments continue to value them and cements them at the heart of our community and civic life.



The Hon. Rob Hulls MP  
Attorney-General  
Victoria

### **Recognition and equality before the law**

People have the right to recognition before the law.

People have the right to enjoy their human rights without discrimination.

People have the right to equality before the law and equal protection of the law without discrimination. Measures taken to assist people who are disadvantaged because of discrimination will not constitute unlawful discrimination under the Charter.

### **Right to life**

Every person has the right to life and the right not to be arbitrarily deprived of life.

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

A person must not be tortured, treated or punished in a cruel, inhuman or degrading way, or subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.

### **Freedom from forced work**

A person must not be held in slavery or servitude.

A person must not be made to perform forced or compulsory labour other than work or service as a result of a court order; during emergency situations; or as part of normal civil obligations.

### **Freedom of movement**

People have the right to enter and leave Victoria, to move freely within it and to freely choose their place of residence.

### **Privacy and reputation**

A person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and the right not to have his or her reputation unlawfully attacked.

### **Freedom of thought, conscience, religion and belief**

People have the right to freedom of thought, conscience and religion. This includes the freedom to choose a religion or belief, and the freedom to demonstrate the religion individually or as part of a community and in public or private.

A person must not be coerced or restrained in a way that limits his or her freedom to choose a religion or to demonstrate the religion.

### **Freedom of expression**

People have the right to hold opinions without interference.

People have the right to freedom of expression which includes the right to seek, receive and impart information and ideas except when lawful restrictions are reasonably necessary to respect the rights and reputation of others or for the protection of national security, public order, public health or public morality.

### **Peaceful assembly and freedom of association**

People have the right to assemble peacefully.

People have the right to freely associate with others and to form and join trade unions.

### **Protection of families and children**

Families, as the fundamental group unit of society, are entitled to be protected by society and the State.

Children have the right to such protection as is in their best interests, without discrimination.

### **Taking part in public life**

Every person has the right to take part in public affairs.

Every eligible person has the right to vote and be elected and to have access to the Victorian public service and public office.

### **Cultural rights**

People with a particular cultural, religious, racial or linguistic background have the right to enjoy their culture, declare and practise their religion and use their language. Aboriginal people have the right to enjoy their identity and culture. They have the right to maintain their language, kinship ties and spiritual and material relationship with the land, waters and other resources to which they have a connection under traditional laws and customs.

### **Property rights**

A person must not be deprived of his or her property except in accordance with law.

## **Right to liberty and security**

Every person has the right to liberty and security.

A person must not be subjected to arbitrary arrest or detention.

A person must not be deprived of his or her liberty, except on grounds established by law, and in accordance with procedures established by law.

A person arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and promptly informed about any proceedings to be brought against him or her.

A person arrested or detained on a criminal charge must be promptly brought before a court and tried within a reasonable time after arrest or detention. If not, that person must be released.

A person awaiting trial must not be automatically detained in custody. His or her release may be subject to guarantees to appear for trial or for any other stage of the judicial proceeding.

Any person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of the detention. The court must make a decision on the application without delay and order the release of the person if it finds that the detention is unlawful.

A person must not be imprisoned only because of his or her inability to perform a contractual obligation.

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

Persons deprived of liberty must be treated with humanity and with respect for their inherent human dignity.

An accused person who has been detained must be segregated from those convicted of offences, except where reasonably necessary.

An accused person detained must be treated in a way appropriate for a person not convicted.

## **Children in the criminal process**

An accused child detained or a child detained without charge must be segregated from all detained adults.

An accused child must be brought to trial as quickly as possible.

A child convicted of an offence must be treated in a way that is appropriate for his or her age.

### **Fair hearing**

A person has the right to have criminal charges and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

A court or tribunal may exclude the media and the public from all or part of a hearing if permitted to do so by a law other than the Charter.

All judgments or decisions made by a court or tribunal in a criminal or civil proceeding must be made public unless this is not in the best interests of a child or is permitted by a law other than the Charter.

### **Rights in criminal proceeding**

A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees:

- (a) to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication that he or she speaks or understands; and
- (b) to have adequate time and facilities to prepare his or her defence and to communicate with a lawyer or adviser chosen by him or her; and
- (c) to be tried without unreasonable delay; and
- (d) to be tried in person, and to defend himself or herself personally or through legal assistance chosen by him or her or, if eligible, through legal assistance provided by Victoria Legal Aid; and
- (e) to be told, if he or she does not have legal assistance, about the right, if eligible, to legal assistance; and
- (f) to have legal aid provided if the interests of justice require it, without any costs payable by the accused person if he or she does not have sufficient means to pay for the assistance; and
- (g) to examine, or have examined, witnesses against him or her, unless otherwise provided for by law; and

- (h) to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses for the prosecution;
- (i) to have the free assistance of an interpreter if he or she cannot understand or speak English; and
- (j) to have the free assistance of assistants and specialised communication tools and technology if he or she has communication or speech difficulties that require such assistance; and
- (k) not to be compelled to testify against himself or herself or to confess guilt.

A child who is charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.

Any person convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher court in accordance with law.

### **Right not to be tried or punished more than once**

A person must not be tried or punished again for an offence for which he or she has already been finally convicted or acquitted.

### **Retrospective criminal laws**

A person must not be found guilty of a criminal offence because of conduct that was lawful at the time.

A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence at the time it was committed.

If a penalty for an offence is reduced after a person committed the offence, that person must be eligible for the reduced penalty.

The trial and punishment of any person for any act or omission which was an offence under international law at the time it was committed, is not affected by the section.

**Equal Opportunity Commission Victoria Advice Line (03) 9281 7100**  
**Country callers toll-free – 1800 134 142**



**TTY service is available for the  
hearing impaired on (03) 9281 7110  
[www.eoc.vic.gov.au](http://www.eoc.vic.gov.au)**

**Department of Justice  
1300-1-JUSTICE  
[www.justice.vic.gov.au/humanrights](http://www.justice.vic.gov.au/humanrights)**

**Translating and Interpreting Service is available on 131 450**

**Information is available in 11 different languages about the Charter**