

# Community organisations and the Charter of Human Rights and Responsibilities Act

Legal information for Victorian community organisations



## This fact sheet covers:

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- what kind of human rights does the Charter seek to protect and promote?
  - does the Charter apply to your organisation?
  - are you complying with Charter obligations?
  - what happens if your organisation breaches the Charter?
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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 act in a manner compatible with prescribed 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.

## What kind of human rights does the Charter seek to protect and promote?

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The Charter seeks to protect and promote 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.

The Charter also seeks to protect the right to privacy, the right to protection from damage to a person's reputation, and rights relating to the procedures of the legal system, such as the right to a fair hearing and to legal representation.

In addition, the Charter seeks to protect rights in relation to families and children, who are considered a particularly vulnerable part of the community deserving of protection.

For a full list of the rights under the Charter, go to the [Victorian Human Rights Commission website](#).

## Does the Charter apply to your organisation?

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In many cases, community organisations will be captured by the definition of 'public authority' and are required to comply with the Charter if the organisation is undertaking functions of a public nature.

In other words, if a community organisation provides services on behalf of government, it 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 of a public authority or the State, whether under a contract or otherwise (this may occur, for instance, 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 specifically include reference to your organisation.**



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.

### Functions of a public nature

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 (e.g. providing services for the homeless, seniors, youth or people suffering illness or disability), and
- receives government funding to carry out the function.

### On behalf of a public authority or State

Just because your organisation is performing functions of a public nature does not mean that it is acting on behalf of the State or a public authority, even if it is receiving public funding to perform the function.

For example, 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’ is a difficult question that will depend on individual circumstances.

Cases suggest the definition of public authority will be interpreted widely in order to protect human rights. For example, Victorian Civil and Administrative Tribunal (VCAT) has 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 (*Metro West v Sudi* [2009] VCAT 2025, [88]–[166]).



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 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, because of a statute or law, there was no other reasonable conduct or decision that could have been made.

This generally imposes two types of obligations on a public authority:

- a procedural obligation to give proper consideration to relevant human rights when making decisions (i.e. did the decision-maker seriously turn their mind to the possible impact on human rights?), and
- a substantive obligation not to act (or fail to act) in a way that is incompatible with the human rights set out in the Charter.

The above obligations do not, however, require a public authority to act in a way that impedes or prevents a religious body (including itself) from acting in conformity with its religious beliefs.

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 considering the Charter rights 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, and
- educating employees and volunteers within your organisation about the Charter and the human rights protected by it.

## NOTE

The Victorian Government has supported a number of changes to the Charter recommended in a 2015 review of the Charter. Although these changes to the Charter have not yet been enacted by Parliament (and are therefore not yet law), community organisations should consider the Government's proposed changes. Some of the relevant proposed changes include:

- clarifying that decisions of public authorities (not just 'acts' of a public authority) must be substantially compatible with human rights;



- introducing a requirement that public authorities make relevant human rights information available when providing services to the community and provide a way for people to have a say about issues that affect them; and
- introducing the ability for any entity (even if it's not a 'public authority') to 'opt in' to obligations as a public authority under the Charter. A community organisation may wish to do this to express its commitment to human rights.

For more information, see the [Victorian Government's website on the 2015 review of the Charter](http://www.justice.vic.gov.au) (at [www.justice.vic.gov.au](http://www.justice.vic.gov.au)).

## 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. As such, a breach of the Charter does not of itself entitle a person to claim damages or compensation.

However, a human rights issue may be raised in conjunction with a complaint under a legal action separate from the Charter. 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, where there has been a breach of a duty of care, or judicial review of the public authority's actions) that individual is able to seek that remedy (except for damages) also on the basis that the public authority breached the Charter.

The Victorian Ombudsman can also receive and investigate complaints about whether administrative actions taken by the government, local councils and public authorities are in breach of, or have not properly considered, human rights.

# Resources

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## Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub ([www.nfplaw.org.au](http://www.nfplaw.org.au)) has more information on the following topics:

- ▶ [Getting Started](#)
- ▶ [Running the Organisation](#)
- ▶ [People Involved](#)

## Legislation

- ▶ [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#)

## Other Related Resources

- ▶ [Victorian Equal Opportunity and Human Rights Commission](#)
- ▶ [Australian Human Rights Commission](#)
- ▶ [Human Rights Law Centre \(HRLC\)](#)
- ▶ [2015 Review of the Charter of Human Rights and Responsibilities Act 2006](#)

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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