



Charters of Human Rights Make Our Lives Better

Here are 101 cases showing how



Charters of Human Rights Make Our Lives Better

No matter who we are or where we are, our lives are better when we all treat each other with fairness and respect and when we can all enjoy our rights and freedoms. But powerful politicians and corporations don't always respect people's rights. Charters of Human Rights help to level the playing field by promoting respect for human rights and by giving people power to take action if their rights are breached.

Charters of Human Rights ensure the actions of our governments are guided by values of freedom, equality, compassion and dignity. Charters foster respect for human rights and help everyone, from school children to people who decide to call Australia home, to understand the rights and freedoms that we all share. Charters reflect our values and help to articulate the kind of society we all want to live in.

Charters prevent human rights violations by putting human rights at the heart of decision making when governments are developing laws and policies and delivering services. Importantly, they also provide a powerful tool to challenge injustice, enabling people and communities to take action and seek justice if their rights are violated.

Yet, Australia has no national Charter of Human Rights that comprehensively protects people's human rights in law. We are the only Western democracy without a national Charter or similar law. There is a community campaign to change this. You can learn more about the campaign at www.charterofrights.org.au.

There are three Charters of Rights* operating successfully at the state and territory level; in the Australian Capital Territory (ACT) since 2004, Victoria since 2006, and Queensland since 2020. These Charters have been quietly improving people's lives, in small and big ways. They have helped to ensure that people are treated with greater fairness, dignity and respect, stopping families from being evicted into homelessness, ensuring people with a disability receive appropriate support and so much more.

“Our lives are better when we all treat each other with respect and fairness. Charters of Human Rights ensure the decisions and actions of our governments are guided by the values of freedom, equality and dignity. Together we can make it a reality.”

— Hugh de Kretser, Executive Director Human Rights Law Centre

Charters are important in good times and bad. The COVID-19 pandemic has highlighted how Charters can help governments to make better decisions when faced with tough choices about how to protect life and health without unduly restricting other rights.

The 101 cases set out in this report highlight the benefits of the Charters of Rights that exist in the ACT, Victoria and Queensland, and the potential for those benefits to be extended by strengthening those Charters.

The 101 cases also highlight the need for a national Charter of Rights, as well as Charters in states and territories which do not yet have them: New South Wales, Tasmania, South Australia, Western Australia and the Northern Territory.

Protecting people’s human rights is in all our interests. Charters of Rights help to make life better for everyone. We hope this report helps to inspire people to use Charters where they exist in Australia; and to join with others in calling for a national Charter and Charters in every state and territory.



*A note on terminology

In this report, we use the term Charter of Human Rights to describe a law that protects a range of human rights. There are different names for these types of laws, including a Human Rights Act or a Bill of Rights. We prefer to use the term Charter of Human Rights because modern Charters are fundamentally different from the United States of America's Bill of Rights and because "Charter" signifies something more significant and meaningful than ordinary legislation. Where we refer to specific laws in this report, we use the term used in those laws; Charter of Human Rights in Victoria and Human Rights Act in Queensland and the ACT.



What are human rights?

Human rights are the basic rights and freedoms that belong to every person in the world, and that governments around the world have promised to comply with. They seek to ensure that everyone of us, no matter who we are or where we are, can live a decent, dignified life.

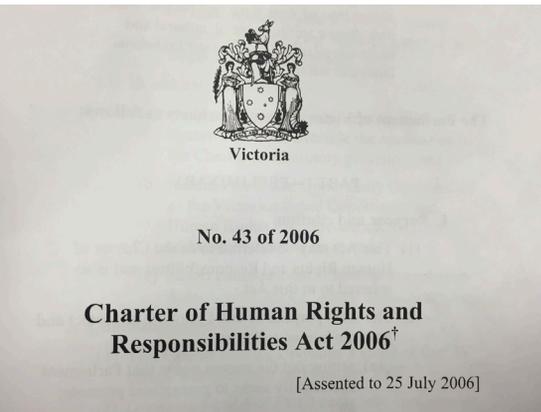
Human rights reflect values like freedom, respect, equality and dignity. Respect for human rights helps to keep our society fair and just.

There is a long history of documentation of human rights going back centuries, and more recently we've had the United Nations Declaration on Human Rights.

While Australian governments have promised to comply with many key international human rights treaties, people cannot enforce these treaties directly under Australian law. Australia has no national Charter of Human Rights that comprehensively protects our human rights in Australian law. Instead, there is an incomplete patchwork of laws, like anti-discrimination laws, that partially protect our rights.

At the state and territory level, Victoria, the Australian Capital Territory and Queensland have protected human rights through a Charter.

Overview of existing Charters of Human Rights in Australia



There are three existing Charters in Australia:

- Human Rights Act 2004 (ACT)
- Charter of Human Rights and Responsibilities Act 2006 (Vic)
- Human Rights Act 2019 (Qld)

Each of these Charters operates in a similar way, but with some important differences.

What human rights are protected in these Charters?

Each Charter protects all the rights set out immediately below. These rights come from international human rights treaties that the Australian Government has committed to comply with. Most of the rights come from a treaty called the International Covenant on Civil and Political Rights. Some come from a treaty called the International Covenant on Economic, Social and Cultural Rights.

- Right to equality before the law
- Right to life
- Right to protection from torture and cruel, inhuman or degrading treatment or punishment
- Freedom from forced work
- Freedom of movement
- Right to privacy and protection of reputation
- Freedom of thought, conscience, religion and belief
- Freedom of expression
- Right to peaceful assembly and freedom of association
- Right to protection of families and children
- Right to take part in public life
- Cultural rights including distinct Aboriginal and Torres Strait Islander cultural rights
- Property rights
- Right to liberty and security of person
- Right to humane treatment when deprived of liberty
- Right to a fair hearing
- Certain rights in criminal proceedings
- Right not to be punished more than once
- Protection from retrospective laws

In addition, the right to education is protected in the ACT and Queensland Human Rights Acts. The right to work and related workplace rights is protected in the ACT Human Rights Act. The right to access health services is protected in the Queensland Human Rights Act.

How do Charters protect people's rights?

The Victorian Charter and the Queensland and ACT Human Rights Acts all work in a similar way. They protect and promote people's rights when dealing with governments; the Victorian Government, Queensland Government and the ACT Government respectively. They also promote transparency in the way the governments and parliaments deal with human rights issues.

They require public authorities, including government departments, public servants, local councils, police and other agencies, to:

- properly consider human rights when making laws, developing policies, delivering services and making decisions; and
- act compatibly with human rights.

They require that new laws must be assessed in Parliament against human rights standards. In some circumstances, a parliament can expressly choose to override human rights.

In some circumstances, they allow governments to limit or restrict human rights. Governments can only do this if they have a good reason for restricting the right and they do it in a reasonable way that is justified in a free and democratic society. In assessing whether a government has lawfully restricted a right, a court will look at things like the nature of the right, the reason for the restriction and any reasonably available less restrictive ways to achieve the purpose for the restriction. In broad terms, to lawfully restrict a right, a government must have a good reason for the restriction and must use the lowest level of restriction to get the job done.

If a government doesn't act compatibly with human rights or properly consider human rights, the Charter and Human Rights Acts give people the power to take action in the courts. There are different ways of doing this in each state or territory that has a Charter.

By taking legal action, people can stop governments from breaching their human rights. However, people can't get money as compensation if a government breaches their human rights. Also, courts can't invalidate laws that breach human rights. Parliaments have the final say on whether laws can breach human rights.

The Charters and Human Rights Acts require courts to interpret laws consistently with human rights.

If someone thinks their rights have been breached or may be breached, they can make a complaint about the issue directly with the relevant government agency. They can also make a human rights complaint to the Victorian Ombudsman in Victoria and the Queensland Human Rights Commission in Queensland.

The Human Rights Commissions in Victoria and Queensland each monitor and report on the operation of the Charters or Human Rights Acts in their relevant state or territory.

The Charters and Human Rights Acts in Victoria, Queensland and the ACT don't apply to the Federal Government or other state and territory governments.

Charters apply to public authorities including some private companies and community organisations

Charters and Human Rights Acts apply to public authorities (or public entities in Queensland). Public authorities include government agencies and officials such as government departments, public servants, local councils, police and other government bodies like road authorities or workers compensation authorities.

Public authorities also include some private and community bodies when they are doing certain things for the government. For example, a private prison company, a community housing provider and a private company delivering public transport may all be public authorities required to comply with human rights.

How can the Victorian, Queensland and ACT Charters be improved?

The existing Charters in Victoria, Queensland and the ACT provide important human rights protection for people and communities. But they should all be strengthened further to improve that protection. Ways they should be strengthened include:

- Protecting a wider range of rights including the right to housing, health and education (Victoria's Charter doesn't protect any of these rights; ACT and Queensland protect some of these rights).
- Providing more accessible ways for people to take legal action if their rights are breached, including by allowing people to bring cases in a low-cost tribunal instead of the Supreme Court.
- Providing a right to compensation if someone's rights are breached.

Making a difference to people's lives in small and big ways

As you read these examples, you will see how Charters make a difference to people's lives in small and big ways. You will see consistent themes about how Charters have:

- Helped governments to identify and address human rights issues affecting people at an early stage of policy development.
- Ensured transparency around how governments and parliaments have considered people's human rights.
- Promoted better understanding of human rights.
- Prevented human rights issues from escalating.
- Provided a way for people to resolve human rights issues by raising them with government and other agencies.
- Given people the power to take action and address human rights issues affecting them through complaint mechanisms and in the courts.

The outcomes you'll read about are common-sense outcomes where the Charter has often prompted a decision maker to think about an issue from a different human perspective and consider the needs of, or consequences for, different people. This is the power of Charters. They prompt governments to think about the human impact of their actions, whether it's in delivering housing services or responding to people with mental illness. Working properly, Charters embed human rights into the DNA of government.

Protecting people's human rights is in all our interests. Charters of Rights help to make life better for everyone. We hope these cases inspire you to take action to protect human rights.



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Charter cases

Case 1:

Recognising Aboriginal and Torres Strait Islander significant dates and events at schools

The Queensland Department of Education has incorporated human rights considerations into their internal complaints process. In one case, the Department received a complaint that Aboriginal and Torres Strait Islander significant dates and events were not being celebrated at a school. The school communicated with the person who complained and provided information about the learning resources that were shared with all staff to enhance and continue discussions with classes for National Sorry Day and National Reconciliation Week.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 109.



Case 2:

Domestic violence survivor avoids eviction to homelessness

Tenants Queensland used the Queensland Human Rights Act to help a single mother who had experienced domestic violence to avoid eviction. The tenant's housing provider had sought to terminate her lease for serious breaches caused by her ex-partner who refused to leave the premises. Tenants Queensland assisted the mother to draft a letter of complaint under the Human Rights Act and submissions in response to the application for termination. The tribunal granted an adjournment which allowed the parties to negotiate a transfer of tenancy. The housing provider then withdrew the application for termination.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 112.

Case 3:

Man with a disability uses human rights arguments to avoid eviction

Tenants Queensland used the Queensland Human Rights Act to help a man with mental health issues to avoid eviction. The housing provider sought to evict the man due to his frequent complaints about common areas. Tenants Queensland assisted the tenant in drafting a human rights complaint stating that the housing provider should have taken the man's disability into account and afforded him an alternative way of communicating with the provider rather than seeking to terminate the tenancy. After ongoing negotiations with the community housing provider, the provider withdrew their application to terminate.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 112.

Case 4:

Expectant mother holds on to her tenancy

Tenants Queensland assisted a single mother, who was 7 months pregnant, to respond to an application for termination of her tenancy due to a serious breach which was based on the conduct of her ex-partner who was involved in alleged illegal activity. The mother filed a human rights complaint, citing the protection order she had obtained against her ex-partner. The housing provider failed to respond to the complaint. Ultimately, the provider withdrew their termination application and the mother was able to remain in the property.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 112.

Case 5:

Person experiencing mental health issues avoids homelessness

A woman was at risk of becoming homeless following an eviction order being made against her by a tribunal. She was experiencing mental health issues and stable accommodation was critical for her in accessing support services. Tenants Queensland helped her to use her rights under the Queensland Human Rights Act to negotiate with her housing provider and to seek an adjournment at the tribunal for the human rights complaint to be addressed. While the tribunal proceeded to terminate the tenancy, she avoided becoming homeless after the housing provider offered to help her access necessary support services.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 113.

Case 6:

Office of the Public Guardian helps children to raise human rights arguments about their placement

The Office of the Public Guardian, a statutory office established to protect the rights and wellbeing of certain adults, children and young people, used the Queensland Human Rights Act in connection with the placement of two siblings in family-based care. The siblings were originally placed with the same family when one was moved to an alternative placement. Following this, and in speaking with the siblings, it became apparent that they were not having regular contact with each other. The Public Guardian considered this was contrary to the children's rights under the Human Rights Act. After informal advocacy was not successful, the Public Guardian lodged a formal human rights complaint highlighting how the failure to ensure regular contact between the siblings breached the children's human rights.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 113.

Case 7:

Parents with a disability use human rights arguments to keep their family together

The Queensland Benevolent Society, a charity which supports people with a disability, children, families, older Australians and carers, has used the Queensland Human Rights Act to advocate for their clients. In one case, the Benevolent Society successfully used the Human Rights Act to assist a couple with disabilities to avoid losing custody of their child. The Benevolent Society advocated for the parents to be treated and evaluated fairly in relation to their ability to raise a child. The family were supported to build practical and parenting skills and their child was not removed from their care.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 114.



Case 8: **Unreasonable delay led to charges being dismissed**

Legal Aid Queensland successfully used the Queensland Human Rights Act to oppose the adjournment of a trial for a minor criminal offence. The prosecution asked for the adjournment because two of their witnesses weren't at the hearing. The Legal Aid lawyer argued that granting the adjournment would breach the defendant's right to be tried without unreasonable delay. The court refused the adjournment, the prosecution offered no evidence on the charges and the court ultimately dismissed the case.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20,

Case 9: **Complaint leads to agreement to install escalators for accessibility**

When escalators at a train station were replaced by steep, inaccessible stairs, one older resident of the community made a human rights complaint. This was resolved through a conciliation process that led to agreement that escalators would be installed as part of the station upgrade.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 135.

Case 10: **Family in need of accessible social housing offered support after long delay**

After an Aboriginal woman with a disability, and her three children, were forced to vacate their social housing, the woman lodged a complaint regarding the length of time taken to arrange modifications to ensure she could shower and access the kitchen safely. The social housing provider settled the complaint by providing a financial sum and expressing their regret in the delay. The woman and her children were offered services and assistance to apply for safe and accessible accommodation.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 137.

Case 11:

ACT Human Rights Commission assists Aboriginal child to raise human rights arguments in relation to her experience in custody

The ACT Human Rights Commission intervened in a court case regarding the infringement of the cultural rights of an Aboriginal child detained at the Bimberi Youth Justice Centre. The child said that her human rights were breached when she was segregated from other children detained in the centre and when the centre staff confiscated artwork and the Koori Mail newspaper from her cell. The case settled with the ACT Government apologising to the girl for her experience in custody and for staff removing the artwork and copies of the Koori Mail from her cell.

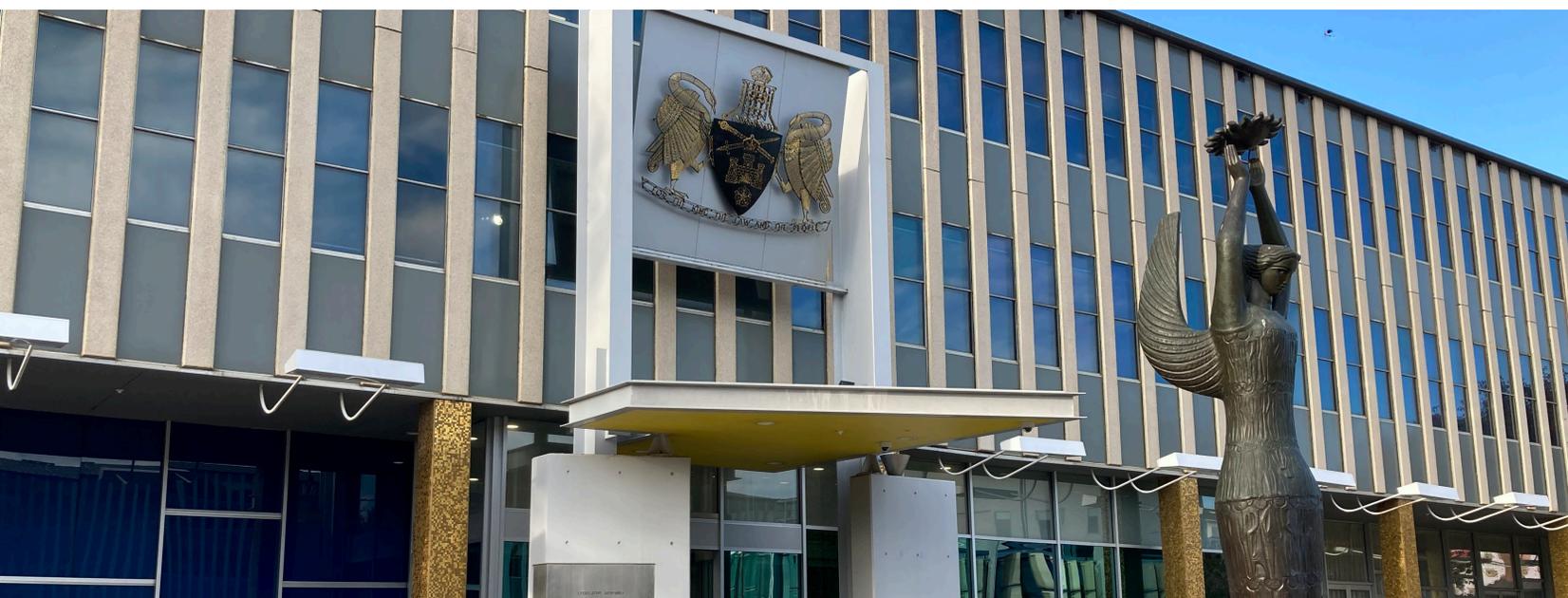
Source: ACT Human Rights Commission Annual Report 2019-20, p. 28.

Case 12:

Single mother secures priority place on housing assistance register

A single mother waiting for public housing was removed from the housing assistance register because her income exceeded the new threshold. She appealed to the Commissioner for Housing arguing that her gross salary shouldn't be taken into account as she had to pay childcare costs and a fixed part of her salary went towards a car leasing contract, which she could not exit. The Commissioner rejected this claim. The woman appealed to a tribunal which decided that the totality of her situation amounted to severe hardship which warranted her allocation to housing on a priority needs basis. The Commissioner for Housing appealed, arguing that the tribunal didn't have the power to make this decision. Noting the rights to protection of the family unit and protection of children under the ACT Human Rights Act, the Supreme Court decided that the right to a fair trial under the Human Rights Act permitted the woman to have her rights decided by the tribunal, and that this was preferable to a single public official making this decision without review.

Source: Commissioner for Housing in the ACT v Y [2007] ACTSC 84.



Case 13:

Supreme Court sets aside directions limiting the times a daughter can visit her mother

Mariem Omari, a mother with a cognitive disability was under a guardianship order. Her sons were her guardians. Directions made by a tribunal limited the times when her daughter Sabah Omari could visit her. Sabah Omari challenged the directions and won in the ACT Supreme Court. The Court considered that the tribunal had given the woman's brothers 'plenary' or unqualified power which interfered with their mother's rights, including her right to privacy and reputation, freedom of movement and right to liberty and security.

Source: Sabah Omari v Mohamed Omari, Mustafa Omari and Guardianship and Management of Property Tribunal [2009] ACTSC 28.

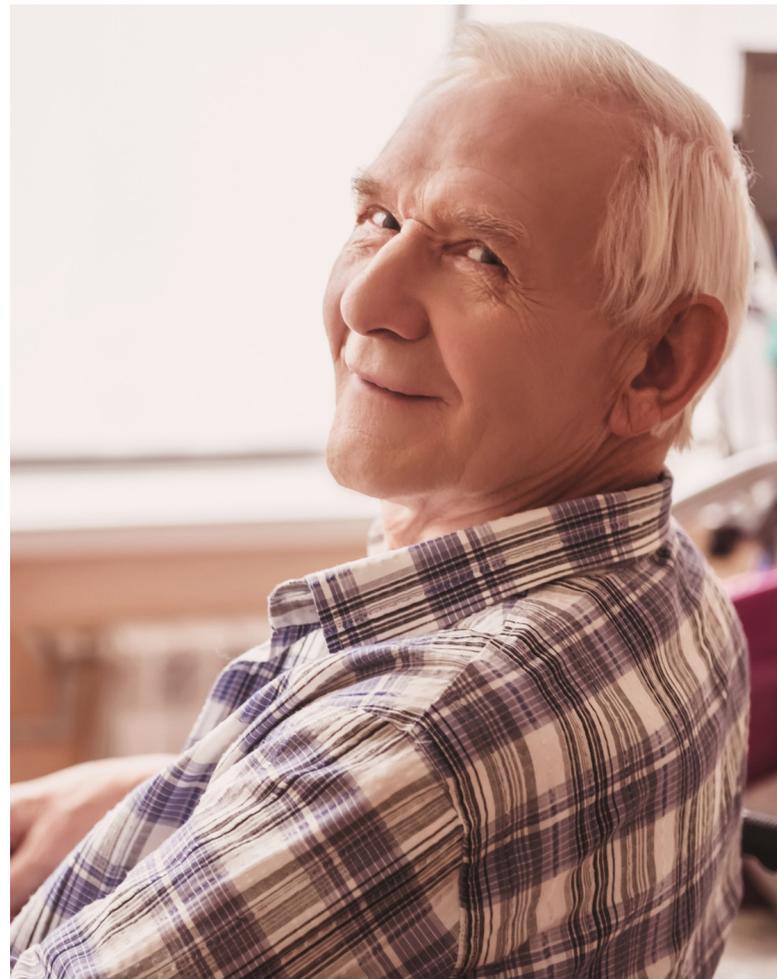
Case 14:

Court rules that a man with a cognitive disability must be provided with nutrition and hydration

ACT Health applied to the ACT Supreme Court for a declaration that it would be lawful for the hospital treating an elderly man with a long history of schizophrenia not to provide him with nutrition and hydration. The man believed that fasting would bring him closer to God and had previously refused or resisted treatment, including feeding tubes, whilst he was under guardianship and psychiatric treatment orders. Doctors estimated the man would only live for another 12 months even with treatment.

The Court refused the application on the basis that the man could not consent to the withdrawal or refusal of available medical treatment due to his cognitive disability and there was the prospect of medical benefit from the intervention. ACT Health had argued that the man's refusal of treatment would make forcible treatment degrading, however the court decided that the doctors had a duty of care to him and declining to treat him might be unlawful.

Source: Australian Capital Territory v JT [2009] ACTSC 105.



Case 15:

ACT Human Rights Act provides a right to compensation for unlawful arrest or detention

Three men were each unlawfully detained. They made claims against the government for compensation for their wrongful detention. A question arose whether the breach of their right to liberty under the Human Rights Act gave them an independent statutory right to compensation under the Human Rights Act, and if so, whether the damages available under this claim differed from that available at common law. Unlike the Victorian Charter and the Queensland Human Rights Act, the ACT Human Rights Act specifically provides that anyone who has been unlawfully arrested or detained has the right to compensation for the arrest or detention. The ACT Supreme Court decided that the Human Rights Act provides for an independent statutory right to compensation for unlawful detention.

Source: Morro, N & Ahadizad v Australian Capital Territory [2009] ACTSC 118. See our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/morro-ahadizad-v-australian-capital-territory-2009-actsc-118-10-september-2009>.

Case 16:

Access to public school education for asylum seekers



The ACT Human Rights Act protects the right to education. The Human Rights and Discrimination Commissioner raised concerns with the ACT Education and Training Directorate about its policies to charge certain international students on various visa subclasses to attend ACT public schools. International students affected by these policies included children and young people granted refugee status, and those seeking asylum while living in Canberra. The various circumstances of these students were relevant to the reasonableness and proportionality of the Directorate's policies under human rights and discrimination law. The Commissioner worked with the Directorate over two years to develop new policies and procedures that better met the Directorate's human rights and discrimination law obligations including policies confirming that ACT public education is free for asylum seekers.

Source: ACT Human Rights Commission Annual Report 2013-14, p. 39.

Case 17:

Freedom of movement for people with a disability

The parents of a man with a disability complained that their son had been deliberately frightened and provoked by his carers. While the ACT Disability & Community Services Commissioner found no reliable evidence to demonstrate that this was the case, the Commissioner made several recommendations in relation to staff training, improved reporting of critical incidents and improved communication and information sharing between the agencies involved in the client's care.

The Commissioner also questioned the nature of the man's accommodation, as it appeared that he was unable to leave his accommodation of his own volition, and the doors of his residence were locked. The Commissioner recommended that a human rights analysis of the man's care and treatment be undertaken, including assessment of the authority under which his freedom of movement was restricted. The recommendations were accepted.

Source: ACT Human Rights Commission Annual Report 2014-15, p. 41.

Case 18:

Better safeguards around a person's capacity to consent to medical treatment

The ACT Civil and Administrative Tribunal decided a person with a cognitive disability, who the Tribunal had previously found to lack capacity under guardianship law, could not automatically be assumed to lack capacity to consent to psychiatric treatment orders.

The ACT Human Rights Commission had made submissions to the Tribunal on the interpretation of ACT law in light of the ACT Human Rights Act and international law including the Convention on the Rights of Persons with Disabilities. The submissions emphasised the presumption in international law that a person has capacity for all decisions and a person seeking to overturn that presumption bears the onus of doing so. Further, each decision affecting an individual's rights required its own assessment of capacity. The Tribunal noted the Commission's submissions on human rights law reinforced common law principles.

The Tribunal's decision confirmed that someone's capacity must be determined on a decision by decision basis, assessed on a spectrum and must not be automatically negated because of a prior finding of loss of capacity for a different area of a person's life.

The ACT later substantially amended its mental health legislation. To ensure consistency with human rights law, the new provisions place greater weight on a person's ability to consent and wishes regarding the treatment.

Sources: ACT Human Rights Commission Annual Report 2015-16, p. 24; The Matter of ER (Mental Health and Guardianship and Management of Property) [2015] ACAT 73.

Case 19:

Ensuring interpreters in tribunal proceedings for people with limited English

The Commission wrote to the ACT Civil and Administrative Tribunal after it became aware that people in proceedings who spoke very limited English were not always being provided with free interpreters. The Commission emphasised that when the Tribunal determines whether someone requires an interpreter to effectively participate in proceedings, it is acting in an administrative capacity and is therefore a 'public authority' for the purposes of the Human Rights Act. Accordingly, when making such decisions, the Tribunal has obligations to act compatibly with human rights and to give proper consideration to human rights, including the right to a fair hearing and the right to equal protection of the law without discrimination.

The Tribunal informed the Commission that it was reviewing its practices regarding interpreters. The tribunal changed information on its website about the provision of interpreters. The revised information suggests that the tribunal will seek to organise an interpreter free of charge for people involved in any kind of matter who inform the Tribunal they need an interpreter; and that there are only limited circumstances in which it will not provide an interpreter.

Source: ACT Human Rights Commission Annual Report 2017-18, pp. 23-24.

Case 20:

Helping child victim/survivors of crime to give evidence

The Director of Public Prosecutions raised children's rights under the Charter to support seeking an extension of time to allow a child, who was the victim/survivor of sexual assault, to give evidence via audio-visual recording. This method of giving evidence is designed to reduce stress and trauma for the victim/survivor. The Court took the Charter into account in agreeing to the extension. The Court decided that the application of the Charter led, in part, to the conclusion that it was in the interests of justice to grant the extension. This issue has now been raised in a number of similar cases.

Source: Director of Public Prosecutions v Pottinger (County Court of Victoria, 2011) and Human Rights Law Centre, Advancing the rights of victim/survivors of crime using Victoria's Human Rights Charter: Your advocacy guide, 2018.

Case 21:

Coroner investigates the role of systemic racism in the death in police custody of proud Yorta Yorta woman Auntie Tanya Day

Proud Yorta Yorta woman Auntie Tanya Day – a much-loved sister, mother, grandmother and advocate - died in December 2017 after being arrested for being drunk in a public place after she fell asleep on a train. Despite causing no disturbance, a V/Line train conductor set off a series of events that led to the police arresting her in circumstances where the Coroner found that the police should have taken her to hospital or sought urgent medical advice. While locked in a concrete police cell, Auntie Tanya Day fell and hit her head on the wall and subsequently died. The Day family's staunch and ongoing advocacy led to the Victorian government committing to decriminalise the offence of public drunkenness in August 2019 and replacing it with a public health response.

The Coroner investigating Auntie Tanya Day's death accepted submissions by the Human Rights Law Centre and the Victorian Equal Opportunity and Human Rights Commission that the Coroner's Court of Victoria is bound to act compatibly with human rights and to consider human rights when making decisions — including the right to life. The Coroner accepted that this meant that their inquiry needed to scrutinise not only the immediate causes of Auntie Tanya Day's death but also the role systemic racism played in her death. This included allowing witnesses to be questioned as to whether "racism played a part of their decision making, including Ms Day's treatment, options considered, their motivations and potential unintended effects of their decision-making."

The Coroner ultimately found that Auntie Tanya Day's death was preventable had she not been taken into police custody; that the V/Line train conductor's decision making was influenced by her Aboriginality and unconscious bias; that the police officer's checks while Auntie Tanya Day was in the cell were inadequate and that she was "not treated with humanity and respect for the inherent dignity of a human person as required by the Charter".

The Coroner found that the totality of the evidence supported a belief that an indictable offence may have been committed, and referred two police officers for criminal investigation. The Director of Public Prosecutions did not, however, prosecute.

The Coroner also recommended that V/Line and Victoria Police request the Victorian Equal Opportunity and Human Rights Commission to conduct a review of the compatibility of its training materials with the Charter.

Sources: Human Rights Law Centre, which represented Tanya Day's family in the inquest. See also Inquest into the death of Tanya Louise Day (COR 2017/6424), Coroner's Court of Victoria.

Case 22:

Imprisonment for unpaid fines of man with a cognitive disability prevented

Zakaria Taha had an intellectual disability. He was issued with numerous fines for different minor offences including riding a bike without a helmet and taking public transport without a ticket. After he failed to pay the fines, his case came before the Victorian Magistrates' Court. The Magistrates' Court had the power to cancel some or all of the fines if it was satisfied that there were special circumstances, like an intellectual disability, or that prison would be excessive, disproportionate or unduly harsh. However, the Magistrate was not aware that Mr Taha had an intellectual disability and did not make inquiries as to whether or not he did. The Magistrate ordered that Mr Taha pay off the fines by monthly instalments and that if he defaulted on the payments, he would be imprisoned for 100 days. Mr Taha defaulted on the instalment payments and challenged the Magistrates' Court decision. The Victorian Court of Appeal ruled that the Magistrates' Court decision was invalid because the court had an obligation, before making an imprisonment order, to enquire about whether the person had any special circumstances, like an intellectual disability, that would justify making a less severe order. The Court of Appeal's decision was heavily influenced by the Charter and in particular the rights to equality, liberty and fair hearing.

The Court of Appeal reached the same conclusion in relation to the similar case of Tarni Brookes, who was a survivor of family violence and had a mental illness, and who received numerous driving fines, mainly for driving on a toll road without CityLink registration.

Source: Victoria Police Toll Enforcement v Taha; State of Victoria v Brookes [2013] VSCA 37. Also see our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/magistrates-must-inquire-before-imprisoning-people-with-special-circumstances-for-unpaid-fines>.

Case 23:

Mental health treatment orders must be reviewed within a reasonable time

Gary Kracke had a mental illness. He challenged an order requiring him to have mental health treatment. The time periods for reviewing his treatment under the relevant mental health legislation had not been complied with, mainly because of administrative failures. Mr Kracke argued that the failure to comply with the treatment reviews on time meant that the compulsory treatment orders were invalid. The Victorian Civil and Administrative Tribunal decided that the treatment orders were not made invalid by the failure to review them. The Tribunal decided that the treatment was a reasonable restriction on Mr Kracke's Charter rights, including his right not to be subject to medical treatment without his full, free and informed consent. This was because the compulsory treatment regime includes safeguards aimed at



ensuring that limitations on Charter rights are reasonable and proportionate. However, the Tribunal declared that the failure to review the treatment orders within a reasonable time breached Mr Kracke's right to a fair hearing. This led to better processes to ensure that treatment orders were reviewed in a timely way. The mental health legislation at the time has now been replaced and the new mental health legislation has clear expiry dates for orders for compulsory treatment to better protect human rights.

Source: *Kracke v Mental Health Review Board* [2009] VCAT 646. See also our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/kracke-v-mental-health-review-board-2009-vc-646-23-april-2009>.

Case 24: Man with a mental illness able to continue managing his own money

Patrick had a long-term mental illness and had been an inpatient in a hospital for many years. He owned a house and wanted to live independently in the community although there was evidence that his wish was unrealistic. The hospital applied for an administration order and the Victorian Civil and Administrative Tribunal made the order knowing that the administrator would probably sell Patrick's home. Patrick appealed the ruling to the Supreme Court arguing that it breached his Charter rights. The Supreme Court agreed and cancelled the administrator appointment. The Supreme Court decided that making an administration order was not the least restrictive option available and that insufficient evidence had been put forward to justify such a serious restriction on rights as Patrick was not mismanaging his money or the home and there was no crisis in terms of his health or his accommodation.

Source: *PJB v Melbourne Health & Anor (Patrick's case)* [2011] VSC 327. See also our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/p-j-b-v-melbourne-health-anor-patricks-case-2011-vsc-327-19-july-2011>.

Case 25:

Man with a mental illness who is detained in a facility has restriction on calling his lawyers removed

A man who was an inpatient at a mental health facility had his phone calls limited by order of his authorised psychiatrist. The psychiatrist thought that the man was making too many calls to government agencies including 000. The psychiatrist ordered that the man be limited to one phone call a day, including to his lawyers, and ordered that his calls be monitored to determine whether they were causing nuisance. Victoria Legal Aid advocated to the psychiatrist that this restriction unjustifiably limited the man's freedom of expression. In response, the psychiatrist agreed to lift the ban on contacting his lawyers and put in place a review period after which the ban on calling other agencies would be reviewed.

Source: Human Rights Law Centre and Victoria Legal Aid, Protecting human rights for Victorians who have a mental illness using Victoria's Human Rights Charter: Your advocacy guide, 2018.

Case 26:

Meaningful access to Aboriginal culture in out-of-home care

Aboriginal children are over-represented in child protection systems and are often removed from their family and placed in the care of non-Aboriginal families. Victoria's Commission for Children and Young People relied on the cultural rights obligations in the Charter to support its recommendations for government and community service organisations to better identify and record Aboriginal and Torres Strait Islander status in the child protection system and to make sure that Aboriginal and Torres Strait Islander children in out-of-home care have meaningful access to their culture.

Source: Commission for Children and Young People, Always was, Always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria, 2016.



Case 27:

Aboriginal woman with a mental illness able to access treatment in the community instead of in hospital

An Aboriginal woman with mental illness was subject to compulsory mental health treatment in hospital. She had a strong connection with her Aboriginal identity and wanted to return home to receive treatment through her GP and with a community psychiatric service that had a good understanding of Aboriginal culture. Although the Mental Health Tribunal made an order for compulsory treatment, it considered her Aboriginal cultural rights under the Charter and decided that a community rather than an inpatient treatment order was less restrictive of her rights and appropriate in the circumstances. The Tribunal acknowledged that discharge from hospital may risk worsening her mental health but decided that the risks were not sufficiently serious or imminent to justify the restriction of an inpatient treatment order. The Tribunal had regard to the high rate of Aboriginal imprisonment, her preference for treatment in the community and decided that community treatment was also consistent with the 'dignity of risk' principle in mental health legislation.

Source: AQH (Victorian Mental Health Tribunal, 2017) and Human Rights Law Centre and Victoria Legal Aid, Protecting human rights for Victorians who have a mental illness using Victoria's Human Rights Charter: Your advocacy guide, 2018.

Case 28:

Victorian Government promotes a more inclusive approach to working with and referring to LGBTIQ people

The Victorian Government developed and published an 'LGBTIQ inclusive language guide' for the Victorian Public Service explaining how to use language respectfully and inclusively when working with, and referring to, LGBTIQ people. Following the publication of the guide, many Victorian public authorities introduced an opt-in scheme for staff to include pronouns in their email signatures.

The Guide notes Victorian public authorities' obligation under the Charter of Human Rights and Responsibilities to act in ways that are compatible with human rights.

Source: 2019 Report on the Operation of the Charter of Human Rights and Responsibilities, p.16.

Case 29:

Ban on protests on public housing estates overturned

In 2013, two men living in public housing used the Victorian Charter to successfully challenge Victorian Government rules that banned political rallies on public housing estates and banned residents from putting political information on noticeboards. The rules also banned door knocking by political representatives and candidates on public housing estates and barred them from booking community facilities. The two men, supported by the Human Rights Law Centre, advocated with government to change the new rules, arguing that the rules breached public housing residents' rights to freedom of assembly and expression in the Charter. In response, the government revised the new rules to remove the bans.

Source: Human Rights Law Centre, Protecting protesters' rights using Victoria's Human Rights Charter: Your advocacy guide, 2018.



Case 30:

Addressing the over-imprisonment of Aboriginal women in prison

Aboriginal women are the fastest growing prisoner group in Victoria and are significantly over-represented compared with non-Aboriginal women. The Victorian Equal Opportunity and Human Rights Commission undertook research on how to reduce the rate at which Aboriginal women were being imprisoned. Drawing on Charter rights including the right to equality, Aboriginal cultural rights and the protection of children, the Commission recommended changes including improved access to diversion, accommodation support to improve access to bail and culturally and gender appropriate programs in prison to promote rehabilitation.

Source: Victorian Equal Opportunity and Human Rights Commission, Charter Report, 2013.

Case 31:

Political protest in a shopping complex was not trespass

Sixteen protesters from a larger group of 150-200 people were charged with trespass and besetting after they took part in a political demonstration outside a shop in the QV Square in Melbourne. The protesters successfully used the Victorian Charter to defend the trespass charge by arguing that the trespass laws must be interpreted to allow protest consistent with the rights to freedom of expression, peaceful assembly and freedom of association. The Court noted that the nature of the inconvenience caused by the protest was not enough to justify prohibiting it. The Court also dismissed the besetting charge, ruling that the protesters did not surround the premises with hostile intent or hinder or impede the public from entering, using or leaving the shop.

Source: Victoria Police v Anderson (Magistrates' Court of Victoria, 2012), Human Rights Law Centre, Protecting protesters' rights using Victoria's Human Rights Charter: Your advocacy guide, p. 2018.

Case 32:

Blind woman able to access audiobooks in prison

A woman became blind in prison. After losing her vision, she couldn't read books from the prison library. At the time, the library did not have any working audiobooks, so her mother bought some for her. The prison's Diversity Manager told the mother she could drop off the audiobooks. However, prison staff had no record of the manager's approval when the mother arrived. She called the Victorian Ombudsman for help when she was unable to sort the issue for herself. The Ombudsman considered the woman's right to equality and protection from discrimination and made enquiries with the prison. As a result of the Ombudsman's communications, the prison confirmed the daughter could have the audiobooks and arranged for her mother to redeliver them.

Source: Victorian Ombudsman, The Ombudsman for Human Rights: A Casebook, p. 40.

Case 33:

Man compensated for discriminatory ban from council buildings

Paul Slattery had multiple disabilities, including bipolar disorder, post-traumatic stress disorder and an acquired brain injury. He made thousands of written and verbal complaints to Manningham City Council that were critical of Councillors and Council employees. Some of Mr Slattery's correspondence alleged corruption and much of it contained inappropriate language. The Council responded by banning Mr Slattery from attending any building whatsoever that was owned, occupied or managed by the Council and restricted his ability to communicate with the Council.

Mr Slattery brought proceedings in the Victorian Civil and Administrative Tribunal claiming that the Council, as a public authority under the Charter, had breached its obligation to act compatibly with, and give proper consideration to his human rights. He also raised breaches of anti-discrimination laws.

The Tribunal noted that Mr Slattery's behaviour was to a significant extent a symptom of his disability. It decided that the Council's ban unjustifiably limited his rights to participate in public life, to freedom of expression and to enjoy his human rights without discrimination. The ban was not justified because there were less restrictive means available to achieve the purpose of the ban, which was to protect employee health and safety. The Tribunal ordered that the Council revoke the ban, pay the Mr Slattery compensation and that the CEO, directors and councillors undergo training on the Charter.

Sources: 2013 Report on the Operation of the Charter of Human Rights and Responsibilities, p. 54; Slattery v Manningham City Council [2013] VCAT 1869. See our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/vcat-finds-breach-of-the-charter-in-recent-discrimination-case>.

Case 34:

A woman uses Charter to negotiate culturally appropriate crisis accommodation

A woman seeking assistance from a crisis accommodation service advised that, as a practising Muslim, she could not reside in a premises with men. The service proceeded to refer her to a backpacker's hostel where most residents were men. The woman felt intimidated and harassed having to share bathrooms and kitchen facilities with men, and it was Ramadan at the time. She contacted the Homelessness Advocacy Service at the Council of Homeless Persons for assistance. The advocacy service contacted the crisis accommodation service raising the woman's cultural and religious rights under the Charter. As a result, the service agreed to find appropriate crisis accommodation and ultimately found her a long term place in a women's rooming house.

Source: 2014 Report on the Operation of the Charter of Human Rights and Responsibilities, p. 31.

Case 35:

Woman supported during investigation of injury incurred while in the care of disability service provider

Parents of a woman supported by a disability service provider noticed that their daughter, Shelly, had bruising around her chin. Shelly's parents contacted the Disability Services Commissioner which assessed that the complaint related to Shelly's right under the Charter to protection from cruel, inhuman and degrading treatment. The Commissioner found that the service failed to consider Shelley's human rights in making decisions that impacted on her quality of life. The Commissioner supported the service to develop an investigation plan and supported Shelly to give her account of what happened. The service provider is now clear about considering human rights of individuals they support and their obligations in reporting incidents.

Source: 2014 Report on the Operation of the Charter of Human Rights and Responsibilities, p. 38.

Case 36:

Coercive questioning by police breaches freedom of movement and right to privacy

Mr Kaba, a black man, was a passenger in a vehicle that was subject to a random stop and search by the police. The police asked for Mr Kaba's name and address multiple times. Mr Kaba refused to provide these details and protested about racist harassment.

The matter went to the Supreme Court which found that the police acted incompatibly with Mr Kaba's rights to privacy and freedom of movement by repeatedly demanding his name and address. The police questioning was found to be coercive, in that Mr Kaba was made to feel that he could not choose to leave or refuse to co-operate, and was in breach of Mr Kaba's Charter rights and Victoria Police's obligation to act in a way that is proportionate and compatible with human rights.

Sources: 2014 Report on the Operation of the Charter of Human Rights and Responsibilities, pp. 71-72; DPP v Kaba [2014] VSC 52. See our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/random-stops-and-license-checks-by-police-lawful-coercive-questioning-not>.

Case 37:

Insurance policy excluding claims for mental illness incompatible with right to equality

Ella Ingram purchased travel insurance in 2011 for an overseas study trip planned for 2012. In early 2012, she was diagnosed with a depressive illness and cancelled her trip on medical advice. The insurer denied Ms Ingram's claim for cancellation costs on the basis that a clause in the policy excluded claims caused by a mental illness.

The Victorian Civil and Administrative Tribunal considered Ms Ingram's claim and found that the insurer discriminated against her on the basis of a disability, breaching the Equal Opportunity Act. The Tribunal considered that an interpretation of a 'disability' in the Equal Opportunity Act compatible with the right to equality in the Charter includes 'a disability that may exist in the future'. This case is an example of the Charter encouraging a human rights interpretation of legislation.

Sources: 2015 Report on the Operation of the Charter of Human Rights and Responsibilities, p. 13; *Ingram v QBE Insurance (Human Rights)* [2015] VCAT 1936. See our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/blanket-mental-health-exclusion-clause-in-travel-insurance-policy-amounted-to-unlawful-discrimination>.

Case 38:

Tribunal refuses parents' application for daughter with an intellectual disability to undergo permanent contraception

The parents of a 25-year-old woman with an intellectual disability applied to a tribunal for approval for their daughter to undergo permanent contraception. The Tribunal identified that the Charter right to equality and the right to protection from medical treatment without full, free and informed consent were engaged. The Tribunal decided that the proposed treatment was not the least restrictive option and was not in the daughter's best interests, therefore the decision to go ahead with the procedure could not be justified under the Charter.

Sources: 2015 Report on the Operation of the Charter of Human Rights and Responsibilities, p. 13; *ZEH (Guardianship)* [2015] VCAT 2051.

Case 39:

Right to equality and fair hearing for self-represented litigants with learning disabilities

Betty and Maria Matsoukatidou (mother and daughter, respectively) were charged by Yarra Ranges Council for failing to secure and demolish their home after an arson attack. They each received fines from the Magistrates Court of Victoria. After their appeals to the County Court were struck out for non-attendance, they applied for orders reinstating them and represented themselves at the hearing.

Maria had a learning disability and Betty was her carer. Betty's first language is not English. They struggled to present their case and the judge dismissed their applications without adequately explaining the relevant procedure or applicable legal test. Maria and Betty consequently sought judicial review of the orders in the Supreme Court.

The Supreme Court found that they were not able to participate effectively in their hearing, in part due to Maria's learning disabilities, and that they were not given a fair opportunity to put forward their case. The Supreme Court ruled that the County Court judge was obliged to make reasonable adjustments to compensate for Maria's disability and ensure her effective participation in the proceeding. The Supreme Court ruled that their rights to equality and fair hearing under the Charter had been breached. The Supreme Court's decision enabled Betty and Maria to challenge the decision of the Magistrates' Court to fine them. They did that with legal representation and won.

Sources: Human Rights Law Centre, *Matsoukatidou v Yarra Ranges Council* [2017] VSC 61. See our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/2017/4/24/victorian-supreme-court-rules-that-courts-have-fair-hearing-and-equality-obligations-to-assist-self-represented-litigants>.

Case 40:

Electroconvulsive treatment ordered against patients' wishes a breach of human rights

Two people with mental illness were unwilling to undergo electroconvulsive treatment (ECT). The Mental Health Tribunal ordered that they be subject to compulsory ECT. The Victorian Civil and Administrative Tribunal upheld those orders. They appealed to the Supreme Court. The Supreme Court noted the case raised important legal issues about mental health legislation and especially provisions on capacity to consent to or decline treatment, in light of human rights in the Charter.

The Supreme Court found that the Victorian Civil and Administrative Tribunal erred in law when examining whether they lacked capacity to give informed consent to treatment and had therefore applied mental health legislation incompatibly with their rights under the Charter. The orders for compulsory treatment were cancelled.

Sources: 2018 Report on the Operation of the Charter of Human Rights and Responsibilities, pp. 77-78; PBU & NJE v Mental Health Tribunal [2018] VSC 564 (1 November 2018). See our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/2019/2/20/victorian-supreme-court-holds-electroconvulsive-treatment-ordered-against-patients-wishes-a-breach-of-human-rights>.

Case 41:

Aboriginal cultural rights need to be considered in decisions around access to the Koori Court

An Aboriginal man, Mr Cemino, applied to the Magistrates' Court in Echuca in country Victoria to transfer the criminal charges he was facing to the Koori Court in Shepparton for sentencing. Mr Cemino wanted to go before his elders in the Koori Court to discuss the circumstances around his actions. There is no Koori Court in Echuca.

The Magistrates' Court in Echuca refused his application, based on the Magistrate's understanding of the 'proper venue' principle, which is the principle that a case is to be heard at the venue nearest to the place where the offence was alleged to be committed, or the place of residence of the defendant. Mr Cemino appealed the decision partly on the grounds that his cultural rights and right to equality under the Charter were not properly considered.

The Supreme Court found the Magistrates' Court erred by giving primacy to the proper venue principle and should have considered Mr Cemino's rights when deciding whether to transfer the proceedings to the Koori Court. This is because the Charter requires that all statutory provisions be interpreted in a way that is compatible with human rights so far as it is possible to do so consistently with their purpose. The Supreme Court ordered the Magistrate's decision be set aside and allowed Mr Cemino to have a different Magistrate consider his transfer request.

Sources: 2018 Report on the Operation of the Charter of Human Rights and Responsibilities, p. 79; Cemino v Cannan [2018] VSC 535. See our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/2018/10/29/human-rights-charter-demands-access-to-koori-court-victorian-supreme-court-holds>.

Case 42:

Safeguards and accountability around decision to admit a man with cognitive disabilities to a locked residential facility

A 70 year-old man had Parkinson's disease, a cognitive disability and mental illness. Because he lacked capacity, the Public Advocate was appointed as his guardian. The Public Advocate consented to his admission to live in a locked residential facility which he could not leave without supervision. The man resisted this, arguing that the Public Advocate did not have the power to detain him. The Public Advocate applied to the Victorian Civil and Administrative Tribunal for a ruling over its powers and its decision to admit the man to a locked facility. The Tribunal examined the situation in detail and whether it was reasonable to limit the man's human rights in the circumstances. The Tribunal also considered whether the Public Advocate had properly considered his human rights when making her decision. The Tribunal ultimately decided that accommodating the man in a locked facility was within the Public Advocate's power and did not breach the Charter. The case demonstrates how the Charter promotes the accountability of guardians and administrators. The Charter required the Tribunal to be satisfied that the Public Advocate had given proper consideration to the man's human rights, including his right to liberty, and whether the limits on his rights were reasonable. The Tribunal advised the Public Advocate to continue to seek less restrictive accommodation options for the man in the future.

Source: Human Rights Law Centre and NLA (Guardianship) [2015] VCAT 1104.

Case 43:

Better justice system responses to victim/survivors of crime who have a disability

For many years, community legal centres, victim/survivor advocates and the Victorian Equal Opportunity and Human Rights Commission have called on the Victorian Government, Victoria Police and the Office of Prosecutions to improve the way the criminal justice system responds to crime against people with disabilities, including by supporting people to report crimes and give evidence in court. The Charter has helped to spur action. For example, the Victorian Government started a new program to help vulnerable victim/survivors, including people with a mental illness or an intellectual disability, to give evidence in certain cases with support from a communication specialist known as an intermediary. Programs like this promote human rights to equality, fair hearing and safety.

Source: Human Rights Law Centre, Protecting human rights for Victorians with disabilities using Victoria's Human Rights Charter: Your advocacy guide, 2018.

Case 44:

Aboriginal children returned to the care of their grandmother

Four Aboriginal siblings were placed in protective care because of concerns for their safety. At first, the children were placed in a non-Aboriginal home and separated from one another. Their mother Catherine Sanding then successfully applied to have the siblings reunited and returned to the care of their maternal grandmother. The court considered (among other things) how this decision would impact on the human rights of the children, and, in particular, their cultural and spiritual identity and connection with their Aboriginal family and the wider community. The court upheld the decision to return the children to their grandmother.

Source: Secretary to the Department of Human Services v Sanding [2011] VSC 42. See our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/secretary-to-the-department-of-human-services-v-sanding-2011-vsc-42-22-february-2011>.

Case 45:

Laws changed so that same sex couples not unfairly excluded from superannuation

The State Superannuation Act 1988 (Vic) was amended in 2001 so that people in same sex relationships could receive certain superannuation benefits if their partner died. But the changes only operated prospectively, and consequently discriminated against older people in same sex relationships. A woman in this circumstance approached the Public Interest Law Clearing House (PILCH; now Justice Connect) for help. Together they wrote to the Victorian Government using Charter arguments asking for the problem to be fixed. In response, the Government introduced changes to the legislation which passed Parliament and allowed same sex couples to access the superannuation benefits both retrospectively and prospectively.

Source: Public Interest Law Clearing House, Submission to the Review of the Victorian Charter, 2011.



Case 46:

Corrections Victoria establishes rehabilitation program for Aboriginal men on corrections orders

Corrections Victoria used the Victorian Charter to inform the decision-making process behind establishing Wulgunggo Ngalu Learning Place. Wulgunggo Ngalu is a residential rehabilitation program for Aboriginal men on community corrections orders. A key part of the program protects Aboriginal cultural rights by connecting the men with their culture including through the community elders program. Wulgunggo Ngalu won the International Corrections and Prisons Association Award in 2010.

Source: Victorian Equal Opportunity and Human Rights Commission - Submission to the Four Year Review of the Charter, 2011, p. 155.

Case 47:

Protecting a person's right to privacy in residential care

A staff member from the Victorian Government observed that a person living in a residential service was not afforded privacy when assisted by their carers to shower. The staff member raised the issue with the carers, referring to the Charter. The residential service reviewed the person's living environment and made alterations to guarantee their privacy and dignity.

Source: Victorian Equal Opportunity and Human Rights Commission, Submission to the Four Year Review of the Charter, 2011, p. 156.



Case 48:

Improving Victoria's plan to prevent violence against women 2010-2020

The Charter prompts authorities to view programs and policies from a human rights perspective. The Victorian Government's plan to address violence against women took a human rights approach to challenge the underlying causes of violence. It included measures to promote gender equality across work, school and social environments. Drawing on the human rights principles of participation and empowerment, it also included activities and programs to build knowledge and confidence in women.

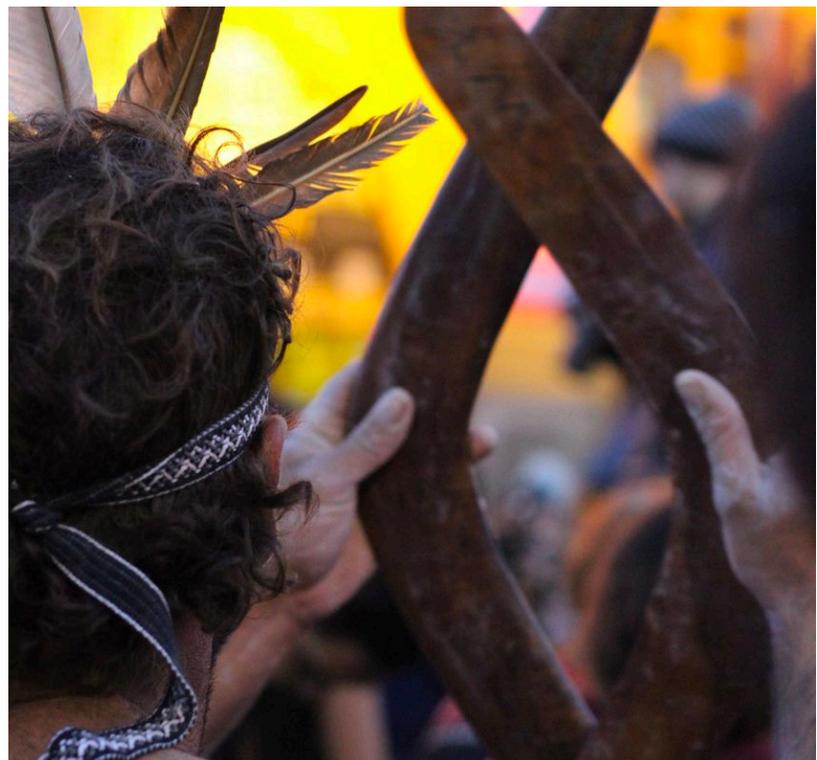
Source: Victorian Equal Opportunity and Human Rights Commission, Submission to the Four Year Review of the Charter, Appendix I, 2011.

Case 49:

Human rights-based framework for agreements between state and traditional owner groups

The Victorian Parliament passed legislation to create a framework for native title agreements to be made between the state and traditional owner groups. The first agreement under this legislation was made between Government and the Gunai/Kurnai people, recognising them as traditional owners of land in the Gippsland region. The most progressive element of the legislation is that it affords traditional owners essential cultural rights as protected by the Charter. Specifically, it recognises the rights of traditional owners to enjoy their culture and identity and to maintain a spiritual relationship with the land and its resources.

Source: Victorian Equal Opportunity and Human Rights Commission, Submission to the Four Year Review of the Charter, Appendix I, 2011.



Case 50:

Reducing restraint and seclusion in mental health services

The Department of Health reviewed procedures in mental health services in light of Charter requirements and made efforts to reduce the use of restraint and seclusion. This process is being achieved through:

- involvement in the National Safety Priorities Action Plan;
- the review of guidelines on seclusion published by the Chief Psychiatrist;
- the development of state-wide training and education programs; and
- the establishment of a clinical audit program.

Source: Victorian Equal Opportunity and Human Rights Commission - Submission to the Four Year Review of the Charter, Appendix J, 2011.

Case 51:

Council protects the rights of people with disabilities

The Charter had a 'discernible impact' on the policies and practices of Boroondara City Council which undertook extensive planning to ensure that their pedestrian precinct was accessible for people with disabilities. This required the involvement of their Disability Action Group and the engagement of various third parties to ensure that the rights of all persons with varying disabilities were met.

Source: Victorian Equal Opportunity and Human Rights Commission, Submission to the Four Year Review of the Charter, Appendix I, 2011.

Case 52:

Protecting a single mother of three from homelessness

The Ministry of Housing tried to evict a single mother from public housing after it was found that her boyfriend was growing marijuana on the premises. The Ministry of Housing refused requests to reconsider the eviction notice. The mother applied to the Tribunal but lost her case. She then appealed to the Supreme Court and won. The Court ruled that the Ministry must reconsider its decision taking into account the Victorian Charter. In particular, the Ministry had to consider the mother's right to property, right to privacy and right to family life. As a result, the Ministry withdrew the eviction notice.

Source: Michael Pearce SC, Submission to the Review of the Victorian Charter, 2011.

Case 53:

Man with a disability protected from eviction

A Victorian Department attempted to evict a man who used a wheelchair from his home. In addition to his physical disability, the man had a mental illness and spoke limited English. The Department sought to evict him based on information gathered from police as to a drug-related allegation against the man. However, police had not charged the man with any offence. Fitzroy Legal Service assisted the man to argue that his rights under the Charter were not being properly considered and in particular that the Department was acting contrary to the presumption of innocence and without procedural fairness. The arguments led to a successful settlement of the matter; the man was relocated to alternative accommodation.

Source: Fitzroy Legal Service, Submission for Review of the Victorian Charter, 2011.

Case 54:

Preventing the eviction of siblings from refugee background

MetroWest, a housing provider, tried to evict two siblings who had recently arrived in Australia as refugees, for no specified reason. The Director of Footscray Housing Services, after hearing what was happening, engaged PILCH to challenge the eviction. MetroWest eventually agreed that they were bound by the obligations in the Charter and withdrew the application for eviction.

Source: Fitzroy Legal Service, Submission to the Review of the Victorian Charter, 2011.

Case 55:

Preventing the eviction of a person with an intellectual disability

Action for More Independence and Dignity in Accommodation (AMIDA), along with Tenants Union Victoria (TUV), used the Charter to protect the rights of a person with an intellectual disability who had been given a notice to vacate his rooming house based upon his behaviour. The man's behaviour was a consequence of his disability. AMIDA and TUV used the Charter to open up discussions with the landlord about its human rights obligations. Consequently, the landlord considered the Charter and agreed to an alternative course of action. The final agreement meant that the man could stay in the rooming house for six months while looking for alternative accommodation, so long as no house rules were breached. At the end of the six months, the man had not breached any house rules and the landlord allowed for him to remain in the premises.

Source: Action for More Independence and Dignity in Accommodation, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case 56: **Improving security and privacy at the home of a man with disabilities**

A man with cerebral palsy and vision impairment was very concerned about security in the housing commission premises where he lived. He requested the addition of a mesh screen to his door, offering to pay for it. This was rejected by the community housing authority without reason. The man's advocate helped him to challenge the decision raising his rights under the Charter. The advocate argued that the screen would assist with security and also give him more privacy in his home. In response the community housing authority decided to arrange for the screen within two weeks.

Source: Leadership Plus, Submission for Review of the Victorian Charter, 2011.

Case 57: **Woman gains access to disability services**

A woman with dual disability was not eligible to access services because neither of her disabilities, when considered separately, met the requirements of the relevant government departments. The woman sought to be moved into more appropriate living conditions as she had been robbed and sexually assaulted in the special residential services in which she lived. The advocate for her case wrote to the relevant government departments raising various human rights issues under the Charter including her right to equality, to protection from inhuman and degrading treatment and to security of person. The advocate used the Charter to highlight the woman's concerns with the departments. As a result, she was appointed a case worker, received 15 hours per week of one-to-one support and was approved to be moved into appropriate housing.

Source: Leadership Plus, Submission for Review of the Victorian Charter, 2011.

Case 58: **Protecting a man with a cognitive disability from financial abuse**

A man with a disability was pressured by his sister and members of his church community group to move in with his sister and allow her access to his \$60,000 savings. The man's advocate used the Charter to help the man and his church community to understand what his rights were. As a result, he was able to continue living independently, he had an intervention order taken out against his sister, she was further investigated for financial abuse and he recovered his savings. He then appointed state trustees to be his financial administrator.

Source: Leadership Plus, Submission for Review of the Victorian Charter, 2011.

Case 59:

Single mother with a disability avoids having her daughter being removed from care

A single mother with cerebral palsy was at risk of having her daughter being removed from care by child protection authorities. She needed to demonstrate that with the appropriate assistance she would be competent, both emotionally and physically, to care for her daughter. Her advocate used the Charter to communicate the woman's rights at mediation in the Children's Court, including her right to equality and to the protection of families and children. The woman was able to demonstrate her capacity to care for her child and child protection authorities are no longer involved.

Source: Leadership Plus, Submission to the Review of the Victorian Charter, 2011.

Case 60:

Student with a disability avoids being expelled

A child with a learning disability was threatened with expulsion by his school due to some behavioural issues. The child's advocate raised the child's human rights with the school and the Department of Education. As a result of the communication, the child was provided with the support he needed, which reduced his behavioural issues and consequently, he was allowed to stay on at the school.

Source: Youth Affairs, Council of Victoria, Submission to the Review of the Victorian Charter, 2011.

Case 61:

Man with a physical disability allowed to continue living in family home

A man with physical disabilities and limited mobility continued to live in his family home after his mother had been admitted to an elderly care unit and placed under a financial administration order by a tribunal. To prevent the home being sold by the administrator, the advocate raised the right to property under the Charter and an agreement was reached whereby the man could continue living in the house as a tenant paying rent.

Source: Disability Justice Advocacy, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.



Case 62:

Charter helps man with a disability receive services to help community integration

A man with a physical and mental disabilities living in a supported accommodation unit was not provided with appropriate services to which he was entitled. In particular, he was unable to leave the unit to integrate with the community. His advocate invoked the Charter on his behalf, claiming that failure to provide this service breached his freedom of movement. Consequently, services were provided to enable his integration into the community.

Source: Disability Justice Advocacy, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case 63:

Charter helps man to access disability aids in prison

A man with a physical disability detained in a prison was frequently deprived of his aids when being moved from one part of the prison to another. This would result in him being without aids for weeks at a time and consequently suffering a great amount of pain. His advocate invoked his right to humane treatment when deprived of liberty under the Charter. As a consequence, the aids were returned to him and authorities assured him that they would remain for the period of his sentence.

Source: Disability Justice Advocacy, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case 64:

Man needing home and community care services receives appropriate support worker

A man who needed home and community care services from his council but was unable to speak or understand English was provided with a support worker who was unable to communicate with him in his own language. The council also refused to pay for an interpreter to assist with the care services. During negotiations with the council, the man's advocate raised the Charter. In response, the council agreed to provide a support worker from the same cultural and language background.

Source: Disability Justice Advocacy, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case 65:

Man with a disability allowed to privately access to his own mail

A man with a physical disability living in a shared supported accommodation unit objected to his mail being opened by the workers at the unit. The man was capable of opening his own mail. The rationale behind the unit's policy was to ensure that any accounts needing payment could be taken care of. The man's advocate invoked his right to privacy under the Charter. Consequently, the unit's policy was changed and the man was allowed to privately access his own mail.

Source: Disability Justice Advocacy, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case 66:

Tenant's freedom of religion protected in housing works dispute

A man with a physical disability living in public housing objected to work being carried out on his house on a holy day due to his religious beliefs. The contractors threatened to claim a breach of tenancy legislation. The man's advocate invoked the man's freedom of religion under the Charter. As a consequence, the threat was withdrawn and the work was rescheduled.

Source: Disability Justice Advocacy, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case 67:

Criminal law process that would undermine a child's rehabilitation is stopped

A child was charged with an offence. Police stated that the charge would be withdrawn if the child agreed to provide a statement and evidence against another person who was jointly accused of the crime. The charges were later re-issued against the child and a hearing was held two years after the alleged offence was committed. Victoria Legal Aid argued that to re-issue the charges was an abuse of process and breached the Charter obligation to pursue a process that supported the child's rehabilitation. The charges were consequently stayed.

Source: Victorian Legal Aid, Submission to the Review of the Victorian Charter, 2011.

Case 68:

Family provided with appropriate secure housing

A woman from a refugee background was living with her children in public housing. She feared for her safety in the housing and applied for alternative accommodation but was denied this by the Office of Housing. A legal service helped her and used the Charter to communicate with the Office of Housing, raising their obligation to uphold the woman's rights, including her right to security of person and protection of families. As a consequence the woman and her children were relocated to more appropriate accommodation.

Source: Public Interest Advocacy Centre, Submission to the Review of the Victorian Charter, 2011.

Case 69:

Young woman with cerebral palsy provided with disability support services

A young woman with cerebral palsy was left in her home, alone and unable to leave, while waiting for the government to determine whether or not she was eligible for disability support services. Her advocate communicated with the government and argued that her treatment breached her right to protection from cruel, inhuman and degrading treatment, and her right to privacy, under the Charter. In response, the woman was quickly determined eligible to receive support services and placed on a waiting list for case management.

Source: Public Interest Advocacy Centre, Submission to the Review of the Victorian Charter, 2011.



Case 70:

Woman to receive urgent medical treatment

A woman was denied immediate medical assistance to treat contractures in her hand due to her being over 50 years of age. These contractures caused her pain and suffering and, over time, the deterioration of her hand. The woman had been waiting three years for treatment and the failure to access treatment in the near future could have led to the need to amputate her hand. Her advocate used the Charter to argue for her access to treatment and she received funding in order to arrange for immediate treatment.

Source: Public Interest Advocacy Centre, Submission to the Review of the Victorian Charter, 2011.

Case 71:

Tribunal matter reopened to protect victim of domestic violence

A tribunal matter regarding the payment of rent and repairs to a property was reopened despite falling outside of its limitation period. The woman involved had a mental illness and had been forced to flee the property due to domestic violence. Her advocate successfully used the Charter in arguing for the reopening of the matter to protect the woman's rights.

Source: Australian Lawyers for Human Rights, Submission to the Review of the Victorian Charter, 2011.

Case 72:

Grandparents use human rights to argue for more appropriate accommodation for grandchild with brain injury living in aged care home

A 40-year-old man with brain injury was living in an aged care home. An opportunity arose for him to live in a more appropriate care facility, but the offer of accommodation needed to be accepted within a 30 day period. His grandparents wrote to the Transport Accident Commission asking it to serve notice on the aged care facility but the Commission failed to do so and the time limit lapsed. They unsuccessfully appealed with the Commission. The grandparents were then assisted to communicate with the Commission about their grandchild's rights under the Charter. Within 12 hours of receipt of this communication, the TAC accepted responsibility for the omission and recognised the need to uphold the man's rights.

Source: Liz Curran, Submission to the Review of the Victorian Charter, 2011.

Case 73:

96-year-old woman protected from eviction and homelessness

A 96-year-old woman was given a 60 day notice to vacate the home she had lived in for 21 years. She was unable to find alternative accommodation in this period of time. An advocate helped her to contest the notice to vacate in a tribunal. The advocate argued that it was a breach of Charter rights. As a consequence, she was given an additional 30 days and was assisted in finding appropriate accommodation.

Source: Hanover Welfare Services, Submission to the Review of the Victorian Charter, 2011.

Case 74:

Guardianship revoked due to incompatibility of decisions with human rights

A woman with a cognitive disability contested the decision of her guardian to have her moved into a residential facility where no workers spoke her language, understood her cultural and religious beliefs or would prepare food in a way which was required by her religion. The woman and her family wanted her to stay primarily with them in her family home. PILCH assisted her to challenge the guardian's decision. Together with other arguments, her advocates argued that the decision breached her Charter rights to the protection of families and children, to enjoy her culture and to freedom of religion. The tribunal decided to revoke the guardianship.

Source: Public Interest Law Clearing House, Submission to the Review of the Victorian Charter, 2011.

Case 75:

Young woman given the opportunity to find appropriate housing

A young woman with a refugee background was given a notice to vacate at the end of her three-month fixed-term tenancy agreement in transitional housing operated by a private provider. Despite having engaged a caseworker and lodging an application for public housing, she had not received assistance to find appropriate accommodation. Following the expiry of the notice period the private provider applied to evict her. The Homeless Persons Legal Clinic helped her to argue that eviction would be incompatible with her Charter right not to have her home unlawfully or arbitrarily interfered with. As a consequence, the housing provider withdrew

the application for possession and signed a second 3-month lease. After this second lease period ended, the young woman had still not found appropriate alternative accommodation. However, with the assistance, she was approved for public housing and further, through negotiating with the private provider, was able to stay in the property during the application process.

Source: Homeless Persons' Legal Clinic, Submission to the Review of the Victorian Charter, 2011.

Case 76:

Stopping the criminalisation of sleeping in cars

The Homeless Persons' Legal Clinic used the Charter in its advocacy campaign against a proposal by the Yarra Ranges Shire to criminalise sleeping in cars. The Shire wanted to stop backpackers who were using parks without paying a fee. However, the consequence of the law would have been to penalise homeless persons sleeping in their cars due to the lack of available appropriate accommodation. The clinic argued that the proposed law was incompatible with Charter rights including freedom of movement, right to life and right to security and liberty. The campaign was successful. The Shire agreed to redraft the law and develop implementation guidelines in consultation with the clinic and local community service providers. That process specifically sought to avoid penalising people experiencing homelessness and even imposed an obligation upon shire officers who suspected a person was homeless to contact a support agency.

Source: Homeless Persons' Legal Clinic, Submission to the Review of the Victorian Charter, 2011.

Case 77:

Family of seven protected from homelessness

A family of seven had experienced great difficulty in receiving financial support and secure housing since arriving in Australia. They were given permission to sublet a public housing property but were required to vacate it upon the original tenant returning. The property later became vacant due to fire damage and the family, left with no other options, moved back in. They contacted the Office of Housing to discuss the situation but the Office stated they would have them removed. The Homeless Persons' Legal Clinic contacted the Office of Housing and argued that the family's removal would breach their Charter rights including the protection of children and families, the right to property and freedom from arbitrary interference with a person's home. Negotiations led to an arrangement allowing the family to sign a tenancy agreement for the property.

Source: Homeless Persons' Legal Clinic, Submission to the Review of the Victorian Charter, 2011.

Case 78:

Charter assists in affording 66-year-old woman appropriate accommodation

A 66 year-old woman with mental health concerns had been applying for alternative accommodation as her public housing property was exacerbating her health conditions. She was told by the Office of Housing that a transfer would not be possible for three years. The Homeless Persons' Legal Clinic communicated with the Office of Housing and raised the woman's rights under the Charter including her right to security and right to life. The clinic requested that the transfer to appropriate accommodation be prioritised. This was successful, with the Office of Housing transferring the woman within two weeks.

Source: Homeless Persons' Legal Clinic, Submission to the Review of the Victorian Charter, 2011.

Case 79:

Teenage sisters separated from family avoid homelessness

Two teenage sisters were studying full time and living in public housing with their parents. The Office of Housing granted the parents a temporary absence to return to Lebanon. They were unable to come back to Australia due to the father's ill health. The sisters, who had remained in Victoria, were unable to continue with rent payments and were issued with a notice to vacate for rental arrears. The Homeless Persons' Legal Clinic was unable to negotiate a suitable agreement with the Office of Housing and sought an order from the tribunal. The clinic helped the sisters to argue that their human rights had not been properly considered as there were less restrictive means to achieve the Office of Housing's purpose. An agreement was reached and the sisters were able to avoid eviction.

Source: Homeless Persons' Legal Clinic, Submission to the Review of the Victorian Charter, 2011.

Case 80:

Eviction of family prevented using fair hearing and other arguments

The Director of Housing applied to evict a family living in public housing. The application was based upon alleged breaches of a compliance order. Eviction would have had serious negative effects on the family, including a risk of homelessness. The Homeless Persons' Legal Clinic requested evidence of the breaches from the Director of Housing but they refused, stating that it would be provided at the hearing. Consequently, the clinic argued at the hearing

that the Director had breached the family's right to a fair hearing under the Charter by failing to provide the evidence. Further, they argued that the Director had not considered the family's right to privacy and reputation and the protection of families and children under the Charter when applying for the order. The tribunal adjourned the hearing until the evidence was produced. The Director withdrew the application for possession and agreed to negotiate with the family to determine a more appropriate solution.

Source: Homeless Persons' Legal Clinic, Submission to the Review of the Victorian Charter, 2011.

Case 81:

Eviction of parents and newborn twins prevented

A refugee from Somalia was unable to attend a bail hearing due to the birth of his twin daughters. The man suffered from a serious drug dependency and the hearing was in relation to drug related offences. As a consequence of these events, he had to serve a one month prison sentence. While in prison, he was sent a notice of hearing as the Director of Housing had applied to evict him and his family from their house. He did not receive the notice nor attend the hearing and consequently the Director of Housing set a date to evict the family in two months. The man tried to explain his situation to the Office of Housing and was referred to a support program worker. The Homeless Persons' Legal Clinic represented the family at the tribunal hearing and argued that the Director of Housing had failed to properly consider the family's rights under the Charter and that its actions were breaching their rights. An agreement was reached setting aside the possession order and for the family to pay a lump sum and rent on an ongoing basis.

Source: Homeless Persons' Legal Clinic, Submission to the Review of the Victorian Charter, 2011.

Case 82:

Reducing the risk of harm and mistreatment in police cells

Victoria Police conducted a major human rights project to assess risks arising from the detention of people in police cells across Victoria. As a result of the review, Victoria Police introduced standard policies, informed by human rights considerations, across all its police cell complexes. The policies focussed on reforms including installation of drinking water facilities; removal of hanging points; rules around professional and personal visits; appropriate exercise yards and seating; dimming lights overnight; natural light and exercise. The review also involved physical assessment of cell complexes and upgrades, including installing smoke detectors and duress alarms. These reforms promote the humane treatment of people detained in police cells. In turn, they help to reduce the risk of self-harm, deaths in custody and mistreatment.

Source: Federation of Community Legal Centres (Victoria), Submission to the Review of the Victorian Charter, 2011, pp. 18-20.

Case 83:

Young woman caring for siblings protected from eviction

Following the death of her father and incarceration of her mother, a 23-year-old woman agreed to be the guardian of her three younger siblings. She maintained their public housing tenancy and had rental payments deducted from her youth allowance. While overseas on a study tour, her youth allowance was cancelled due to the discontinuation of her enrolment. As a result she accrued significant rent arrears but did not receive notice of this. The Director of Housing applied for a possession order after having issued a notice to vacate. The Homeless Persons' Legal Clinic argued at the tribunal hearing that the decisions made by the Director failed to properly consider the rights of the young woman and her siblings. The tribunal, instead of making a possession order, made an order that the young woman pay \$10 per week towards her rental arrears in addition to her rent.

Source: Homeless Persons' Legal Clinic, Submission to the Review of the Victorian Charter, 2011.



Case 84:

Eviction of young man from refugee background prevented

A young Somali refugee moved to Australia after having lived in Kenya for eight years. He was unaware that he needed to inform the Office of Housing that he was working casually and as a result, the Office of Housing recalculated his rent, which caused him to be \$1000 in arrears. He made attempts to repay this debt but found it difficult to make competing payments to various agencies with the small income he received. The Homeless Persons' Legal Clinic requested that he be placed on a payment plan but this was refused and an order for possession was applied for. The clinic made submissions to the tribunal, asserting that the Director of Housing had not given proper consideration to the young man's rights under the Charter. The tribunal dismissed the application for possession and allowed the man to enter into an agreement under which he could pay his rent and make repayments toward the arrears.

Source: Homeless Persons' Legal Clinic, Submission to the Review of the Victorian Charter, 2011.

Case 85:

Supporting women experiencing family violence

A female family violence worker at Women's Health West has stated that the Charter had a prominent impact in not only the way in which human rights issues are framed and tackled but also the practical realisation of these rights across various sectors. The family violence worker stated: "We frequently refer to the Charter to educate clients about their rights and responsibilities, such as the right to live free from violence and the right to be safe. Often women are surprised to hear this and respond that this is the first time they've had their experiences framed in this way. At times, workers will refer back to legislative changes that reflect these rights, such as police power to temporarily remove suspected perpetrators of family violence from the house, issue safety notices and apply for intervention orders on behalf of the affected family member and the requirement to make relevant referrals to regional family violence services, men's referral services and the Department of Human Services. So the rights are backed up by actions that actually make a difference."

Source: Western Region Health Centre and Women's Health West, Submission to the Review of the Victorian Charter, 2011.

Case 86:

Supreme Court finds that children held in maximum security prison were deprived of their human rights

After riot damage to a youth justice centre, the Victorian Government set up a new youth justice centre in a unit in the maximum security adult Barwon Prison and started transferring children as young as 15 there. The conditions in the unit were extremely harsh and children were subjected to extended solitary confinement, regular handcuffing and denied proper education.

A number of Aboriginal children took legal action using the Charter and other laws to challenge their transfer to the prison. In response, the Victorian Government agreed to remove all Aboriginal children from the adult prison. A number of non-Indigenous children then brought a similar legal action challenging the decision to set up the unit in the adult prison and transfer children there. The Supreme Court and then the Court of Appeal ruled that the decision was unlawful because the Minister failed to properly consider the childrens' human rights under the Charter including the right to humane

treatment and the right to protection of children as is in their best interests.

When the Minister then made a fresh decision that kept the children in the adult prison, certain children brought a final challenge using the Charter and other laws. The Supreme Court again ruled that the government's actions breached the childrens' 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 into existing youth justice centres. The Court also ruled that a decision approving the use of capsicum spray in the unit in the adult prison was unlawful.

Source: Human Rights Law Centre and Certain Children v Minister for Families and Children [2017] VSC 251. See our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/2017/6/30/victorian-supreme-court-finds-establishment-of-youth-justice-centre-at-barwon-adult-prison-contrary-to-human-rights-and-unlawful>



Case 87: Preventing a young man's eviction into homelessness

Abdi Mohamed, a 21 year-old man living in accommodation provided by a transitional housing provider was given a 120 day notice to vacate in accordance with the provider's 'youth tenancy policy'. Mr Mohamed would not have been able to afford private housing on his Newstart allowance and would be evicted into homelessness. He challenged the eviction.

The Victorian Civil and Administrative Tribunal decided that the transitional housing provider

was a public authority and was required to comply with the Charter. The Tribunal decided that the implementation of the youth tenancy policy in this case was arbitrary and breached of Mr Mohamed's right not to have his privacy or home arbitrarily interfered with. The Tribunal's decision prevented the eviction.

Source: Homeground Services v Mohamed (Residential Tenancies) [2009] VCAT 1131. See our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/homeground-services-v-mohamed-residential-tenancies-2009-vcac-1131-6-july-2009>

Case 88: Police express regret about asking traditional custodians to move on while exercising their cultural rights

Adrian Burragubba, a leader of the Wangan and Jagalingou people, and his family were camping, practicing their culture and performing traditional ceremonies on a pastoral lease area. Police officers approached the group and asked them to leave, stating that an international mining company occupying the land had claimed they were 'trespassing'. The site was the subject of an Indigenous Land Use Agreement but the family opposed the agreement and the mine, saying that Aboriginal people had been exercising their culture by fishing and hunting and performing ceremonies for more than 40,000 years.

Cultural rights of Aboriginal peoples and Torres Strait Islander peoples are specifically protected by the Queensland Human Rights Act, including the right to maintain their distinctive spiritual, material and economic relationship with the land and waters with

which they hold a connection. The family told the police that they had received expert advice that they could lawfully exercise their cultural rights and responsibilities. However, the police ordered the group to pack up their equipment and leave within an hour. The family says that this caused grief and trauma.

The Queensland Police Service agreed to provide a statement of regret which was able to be shared publicly. The statement acknowledged that the events caused embarrassment, hurt and humiliation for Mr Burragubba and his extended family, that there are complex legal issues and cultural sensitivities, and that the Queensland Police Service will commit to take into account the issues in the complaint in future responses.

Source: The Second Annual Report on the Operation of Queensland's Human Rights Act 2020-21, p.162.

Charters of Human Rights in a crisis: COVID-19

The COVID-19 pandemic is an ongoing global human rights crisis, causing widespread loss of life and prompting governments to severely restrict rights in response. People's ability to earn a living, attend school, see loved ones, access health care, worship and so much more have all been affected. The most vulnerable have often been impacted hardest.

Governments continue to be forced to make tough choices about how to save lives and protect health without unduly restricting other rights. Charters of Rights help to get this balance right. Charters requires governments to respect our human rights in good times and bad. Charters also provide that any restriction on rights must be genuinely necessary to achieve a proper purpose and the restriction used must be no wider than needed for that purpose.

Whether it's about quarantine, masks, curfews or vaccination mandates, these human rights principles provide a compass to guide governments in making the right decisions to respond to this pandemic. They help all of us assess whether our governments are doing enough, getting it right or going too far. Where governments get it wrong, Charters provide power to people to take action, through complaint mechanisms or legal action.

Charters help to ensure that even in times of crisis, we hold on to the values we all share, like fairness, compassion, dignity and respect.



COVID-19 cases

Case 89:

Victorian Government abandons proposal to give health officers the power to detain people based on what they might do

In response to the ongoing COVID-19 pandemic, the Victorian Government introduced legislation into Parliament which, if passed, would have allowed officers, authorised under public health legislation, to detain people based on the officer's belief about what the person might do. At the same time, the Government sought to expand the type of people who could be authorised as officers; under the proposal, a member of the public could have been appointed as an authorised officer and given the power to detain people. The Government specifically flagged the use of the controversial powers against people with mental illness.

A range of bodies raised human rights concerns with the legislation. A Victorian Parliamentary committee, which reviews proposed legislation for compatibility with Victoria's Charter, also raised human rights questions about the proposal. The Government agreed to amend the legislation and did not proceed with the proposed detention powers.

Source: Human Rights Law Centre 2021, Parliament of Victoria Scrutiny of Acts and Regulations Committee Alert Digest No.9 of 2020.

Case 90:

Human rights considered in response to hotel quarantine complaint

A man made a human rights complaint about the impact of his detention in hotel quarantine on his mental illness. Queensland Health had regard to the protection of human rights, including the right to access health services, in responding to a complaint and arranged for mental health services to be available via telehealth.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 110.



Case 91:

Human rights protect against disproportionate effect of COVID-19 public health measures

Caxton Legal Centre used the Queensland Human Rights Act to advocate for its clients affected by COVID-19 public health measures. The protection of human rights was incorporated into submissions Caxton Legal Centre made on behalf of its clients, including in applications for compassionate variation to quarantine rules and review of fines for non-compliance with COVID-19 directions

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 111.

Case 92:

Human rights focus in advocating for people in prison during the COVID-19 pandemic

The human rights of people in prison were significantly affected during the COVID-19 pandemic. People were confined to their cells for extended hours, in-person visits were cancelled or postponed, there was limited access to telephones and video conferencing and medication was not received at the right time or in the correct dosage.

Caxton Legal Centre used the Queensland Human Rights Act to advocate with the Queensland Corrective Services and Queensland Health to gain its clients access to telephone conferencing for legal services. Caxton Legal also used the Human Rights Act to argue that a number of the quarantining measures implemented at the prisons breached fundamental human rights, including the protection of families and children, right to access health services and protection from torture and cruel, inhuman or degrading treatment.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 111.

Case 93:

Teenage boy's right to protection of families observed despite strict COVID-19 public health measures in detention

The family of a teenage boy detained in a youth detention centre raised concerns about his access to family visits, noting the right to protection of families and children under the Queensland Human Rights Act. COVID-19 quarantine measures prevented the boy from having a family visit for his

birthday. The boy's family and the detention centre reached an agreement allowing the boy to have a video call with his family for his birthday and then had an in-person visit following the easing of restrictions.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 134.

Case 94: Child with a disability exempted from detention in hotel quarantine

A family detained in hotel quarantine in Queensland complained to the Queensland Human Rights Commission about the impact of the detention on their child who has autism spectrum disorder. The child experienced serious food aversions which were not accommodated by the hotel quarantine operator. The family was also separated in quarantine so that the child's mother was not able to be supported by the other family members. The hotel quarantine conditions caused the child to experience serious distress.

The Commission used the Queensland Human Rights Act to engage with Queensland Health and secure the family a fast-tracked exemption to the hotel quarantine requirement one day after the family's complaint was lodged, allowing the family to quarantine at home.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 136.

Case 95: Protecting the mental health of a woman in hotel quarantine

A woman lodged a complaint with the Queensland Human Rights Commission on the grounds that the conditions of hotel quarantine, including the enclosed spaces and absence of natural light and air, were exacerbating her mental health issues. The woman had been recommended to be placed in a room with a balcony but this had not been actioned. The complaint was lodged after the woman was not able to resolve the issue herself with the hotel quarantine operator. After a swift conciliation process, the woman was moved into a room with a balcony that was more appropriate for the maintenance of her mental health and wellbeing through the quarantine period.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 137.



Case 96:

Ombudsman helps woman to navigate border restrictions on freedom of movement

A woman was relocating from NSW to Victoria to start a new job during a period of COVID-19 related border closures between the states. The woman's parents took annual leave from their employment to help her move. The woman applied for permission to cross the border. When she didn't receive the permit in the expected time, she called the Victorian Government. The Government told her it couldn't find her application and she would need to reapply. Because of the delay, she missed the start date of her new job and her parents had to take additional annual leave. She complained to the Victorian Ombudsman which made enquiries about the restriction on her freedom of movement. Following the enquiries, the Victorian Government called the woman and provided her and her family with their permits.

Source: Victorian Ombudsman, The Ombudsman for Human Rights: A Casebook, p. 34.

Case 97:

Refusal to issue driver licence overturned

A woman living in Wodonga in Victoria needed to travel across the Murray River to Albury in NSW for medical treatment. She was prevented from doing so during COVID-19 border closures because she had a NSW drivers licence which was insufficient proof that she resided in Wodonga for the purposes of the border bubble travel arrangement. VicRoads refused her request to convert the licence to a Victorian one on the erroneous basis that her licence was suspended. She complained to the Victorian Ombudsman which made enquiries with VicRoads regarding the impact of its decision on the woman's right to freedom of movement and her ability to attend medical appointments. VicRoads confirmed the licence was not suspended and issued a new Victorian licence free of charge.

Source: Victorian Ombudsman, The Ombudsman for Human Rights: A Casebook, p. 35.

Case 98:

Freedom of movement and liberty considered in delay of release of individual quarantining after COVID-19 positive test

A man was required to isolate after testing positive for COVID-19. He was not contacted by the Victorian Government and could not get through to them for over 16 days, despite being symptom free for 10 days. He complained to the Victorian Ombudsman which raised the issue with the Government outlining the impacts on the man's mental health and his inability to return to work. The Government interviewed the man about his symptoms and issued him with a clearance certificate.

Source: Victorian Ombudsman, *The Ombudsman for Human Rights: A Casebook*, p. 36.

Case 99:

Transparency and accountability around the introduction of a curfew

Michelle Loielo owned a restaurant in the Mornington Peninsula, part of Greater Melbourne. She was financially impacted by reduced patronage to her business during Melbourne's lockdown response to the COVID-19 pandemic in 2020. The lockdown response included, at times, an overnight curfew. She used Victoria's Charter to challenge the validity of the curfew.

The Court had to consider whether Associate Professor Michelle Giles, who was the Deputy Public Health Commander who made the decision to introduce the curfew, properly considered people's human rights under the Charter when making the decision.

It also had to consider whether the curfew decision was compatible with human rights protected by the Charter. This involved considering whether the limitation on rights imposed by the curfew was a reasonable limit as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. It involved looking at the purpose, nature and extent of the curfew and any less restrictive means reasonably available to protect public health. The Court heard evidence from Associate Professor Giles who was cross-examined by Ms Loielo's lawyers. The Court decided that she had seriously considered the impacts of the decision on human rights and identified and considered countervailing interests.

The Court accepted that the curfew was a major restriction of the "human rights and liberties of the free people of Victoria" but decided, after hearing the evidence, that it was reasonably necessary to protect public health and there were no less restrictive means reasonably available to reduce infection rates. The Court concluded that the curfew was a proportionate response to the urgent circumstances created by the pandemic.

Accordingly, while the court case did not succeed, the Charter provided an important means for people affected by the curfew to challenge its justification and provided important transparency and accountability around that justification.

Source: *Loiello v Giles* [2020] VSC 722. See also our case summary here: <https://www.hrlc.org.au/human-rights-case-summaries/2020/11/2/supreme-court-of-victoria-dismisses-challenge-to-melbourne-curfew>.

Case 100: Hard lockdown of public housing towers breaches human rights

In 2020, after COVID-19 cases began emerging in nine high-rise public housing towers in inner north Melbourne, the Victorian Government imposed, without notice to residents, an extremely hard lockdown, detaining around 3,000 people in nine public housing towers. Restrictions were eased in several days for most of the towers, however, 400 people in one tower remained in hard lockdown for two weeks in total, unable to attend work, visit the supermarket or, for the most part, access fresh air and outdoor exercise. People subjected to the lockdown complained to the Victorian Ombudsman which investigated whether the lockdown complied with the Victorian Charter.

Despite the obvious risk posed by COVID-19 in high-rise public housing towers, the Victorian Government had not prepared a COVID-19 outbreak management plan for the relevant public housing estates or for high-density public housing more broadly. When cases began emerging, senior health officials were worried about the situation and began discussing using public health powers to put the towers into quarantine with notice to the residents. Following a crisis cabinet meeting, the timeline for the quarantine was brought forward and no notice was proposed. The Deputy Chief Health Officer, who had the power to detain people in quarantine, was given 15 minutes before a press conference to consider the potential human rights impacts and sign the directions imposing the lockdown. The immediacy of the lockdown was not on her advice.

The Victorian Government had no contingency plans for the imposition of a building-wide 'hard lockdown' to manage an outbreak of COVID-19 within the Victorian community, let alone one imposed without notice late on a Saturday afternoon. When the lockdown was announced to the media, hundreds of police officers were immediately deployed to the public housing estates and directed people to remain in their homes. Chaos followed. People did not have access to food or medication. Urgent requests for medication were delayed or neglected. Information was confused, incomprehensible, or non-existent, especially for people from culturally diverse backgrounds. People did not know who was in charge. No access to fresh air and outdoor exercise was provided for over a week.

The Ombudsman concluded that while swift action to address the public health risk in the towers was necessary, the immediacy of the lockdown was not justified, was not based on the advice of public health officials and led to many of the problems in the treatment of the residents. By imposing the lockdown without notice, the Ombudsman concluded that the Victorian Government had breached the residents' right to humane treatment when deprived of liberty. The Ombudsman stated that proper consideration was not given to the residents' rights when imposing the restrictions, as required by the Charter.

The Ombudsman made recommendations including that the Victorian Government apologise to the residents and introduce greater detention review safeguards into public health legislation. While the Victorian Government refused to apologise, it did support amendments to public health legislation.

Inner Melbourne Community Legal provided legal support to residents of the towers during the hard lockdown and has monitored Victorian Government responses to subsequent outbreaks in the towers in 2021. It reports that, while the government's refusal to apologise continues to impede the rebuilding of trust required to respond to the pandemic, and accessible timely communication in community languages remains problematic, there have been significant improvements in the way government has responded to concerns about outbreaks in the last year. Notably, government has favoured a health response driven by community organisations and abandoned the heavy-handed police response that was a feature of the 2020 lockdown.

Source: Victorian Ombudsman, Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020, 2020, Inner Melbourne Community Legal Centre.

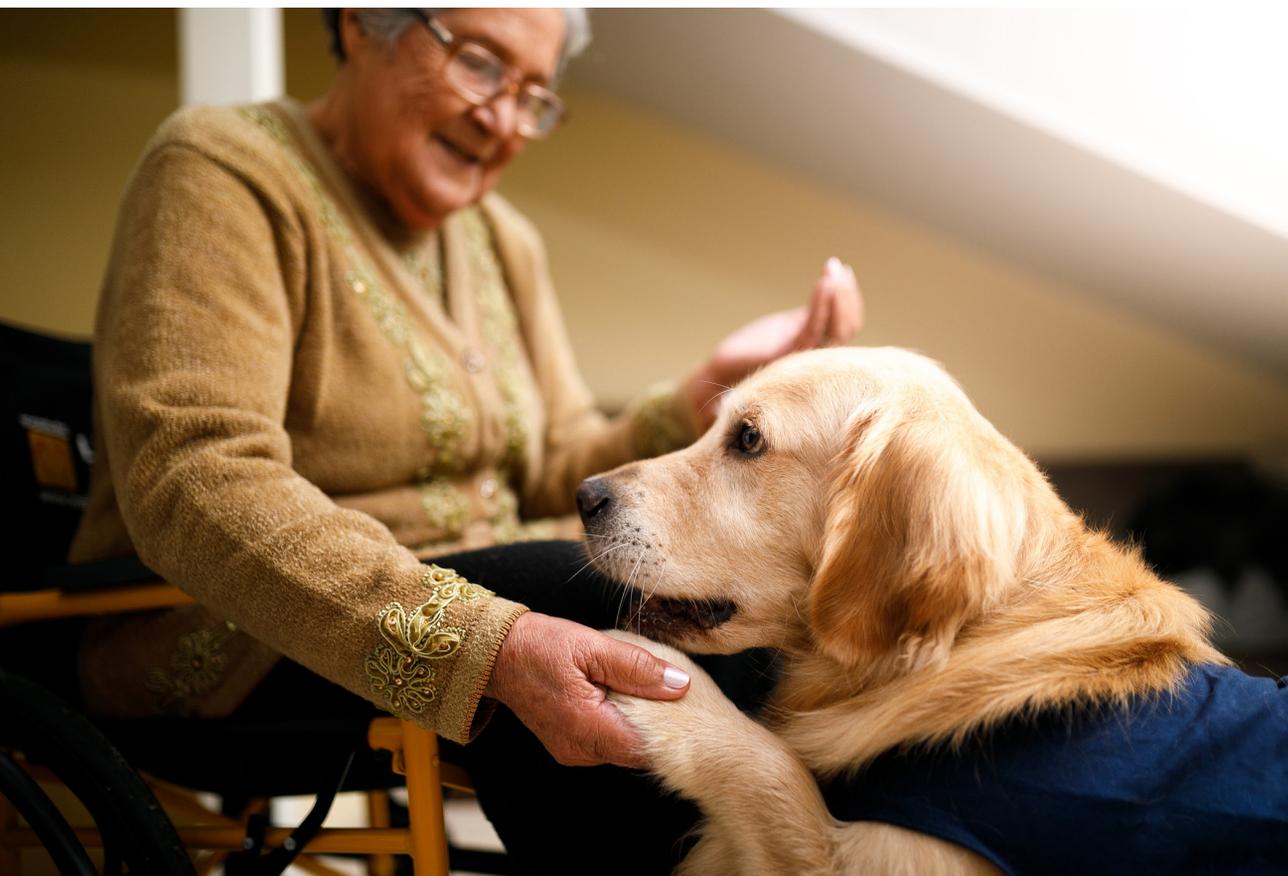


Case 101: Quarantine exemption for woman picking up assistance dog

A woman planned to visit Queensland from interstate to pick up her assistance dog, with her mother and her carer, during a period of COVID-19 border restrictions. She was granted an exemption to enter Queensland where she agreed to isolate for 14 days and then spend a week receiving placement of the dog. However, when they tried to arrange for accessible quarantine accommodation, they were told the woman's needs could not be met and her exemption approval was withdrawn. The assistance dog had been trained specifically for the woman's needs at substantial cost and they were concerned that she would lose the dog allocated to her if she was unable to visit Queensland.

The complainant chose to have this matter dealt with under the Queensland Human Rights Act. Through early intervention, the complaint was successfully resolved for the woman. Her exemption application to enter Queensland was re-approved. Queensland Health organised suitable accommodation for her, her mother and her carer to complete 14-day hotel quarantine.

Source: The Second Annual Report on the Operation of Queensland's Human Rights Act 2020-21, p. 157.



More information

Human Rights Law Centre, database of human rights case summaries

Human Rights Law Centre, advocacy guides to help people use Victoria's Charter of Human Rights

Victorian Human Rights and Equal Opportunity Commission, 2019 Annual Report on the operation of Victoria's Charter of Human Rights and Responsibilities

Victorian Ombudsman, The Ombudsman for Human Rights: A Casebook

Queensland Human Rights Commission, 2019-20 Annual Report on the Operation of the Queensland Human Rights Act

ACT Human Rights Commission, Human Rights Factsheets

Methodology

This publication is a comprehensive update of 'Victoria's Charter of Human Rights and Responsibilities in Action - Case Studies from the first five years of operation' that was released in March 2012. Around half of the case studies in the original report have been replaced here with more recent examples from Victoria, and examples from the Australian Capital Territory and Queensland.

The case studies in the 2012 publication were extracted from amongst the 2,834 submissions made to the 2011 Review of the Victorian Charter by Victorian Parliament's Scrutiny of Acts and Regulations Committee. Submissions to the review came from a variety of sources including government bodies, local councils, non-government organisations, and interested individuals.

Case studies since 2012, and all case studies from the Australian Capital Territory and Queensland, come from a range of sources including Victorian, ACT and Queensland Human Rights Commission Annual Reports, legal cases compiled by the Australian National University Law Reform & Social Justice Human Rights Project, the Victorian Ombudsman, Human Rights Law Centre case summaries, and Canberra Community Law case stories.

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